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THE PRUSSIAN THEORY OF MONARCHY

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During the sixteenth, seventeenth and eighteenth centuries, when absolute monarchy was the prevailing governmental type in Europe, the principle was very generally held by the rulers, and not infrequently acted upon, that the people of a state, together with their lands and other goods and chattels, were, in a very real sense, the property of their king and constituted his *patrimonium*. That this view should have prevailed, is historically explainable. The entire feudal system, out of which the modern monarchy had evolved, was founded upon the idea that the ownership of land carried with it, as one of its incidents, the right of political rulership. When, then, by a process of development, the king had obtained a supremacy over his feudal lords, when his "peace" had become higher than theirs, and had extended over the whole country, and when these lords and those who in turn held of them were forced to concede that they held their lands by a conditional grant from the king, their liege lord, the idea that the monarch was the owner of the entire realm was complete. In him lay the final legal title to all land. All other persons had "tenures" rather than rights of ownership. And, as for the people themselves, the idea that one person might be another person's "man" or "woman" was universal.

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The influence of these ideas on recent political conceptions may be indicated by recalling that serfdom did not disappear from Germany until well into the nineteenth century.

This patrimonial conception of monarchy explains the accepted idea that the throne might be inherited, or willed away by testament, like a piece of property, and that it might be bought and sold, and acquired by marriage. It explains also the recognized right of the king to requisition, upon occasion, the goods of his subjects, and even to sell those subjects themselves to foreign powers, as, for example, was done when the Hessian soldiers were sold by their ruler to England for use against the Americans in the Revolutionary War.

It might seem that a political practice such as this would have been based upon postulates that denied the possession by the governed of moral rights to consideration, or placed the conduct of monarchs outside the realm of ordinary morality. It is quite clear, however, that, despite the general acceptance of the doctrines of Machiavelli, the argument in behalf of royal absolutism and selfishness was not stated in terms as bold as these. It cannot be that the rulers in their dealings with their subjects felt themselves free from all the moral restraints which humanity and sympathy impose. It is clear, however, that the moral obligations which they recognized were those of generosity and charity, rather than those of justice, which would imply the possession of rights by those to whom justice was due.

It would seem, in fact, that the rights claimed and exercised by the eighteenth century monarchs were not different in essential nature from those claimed at the present time by those holders of private property who regard the institution of private property as devoid of social or political connotations, and who therefore regard themselves as vested with the rights of use and disposition, the free exercise of which may not be interfered with except under very special circumstances. Thus, as we know, there are at the present time many owners of large fortunes the possession of which has come to them by accident of descent, by the favoring operation of law, or by the working out of economic forces, who feel themselves free to use their wealth, if

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they see fit, for their own selfish welfare, and, as employers of labor, consider that those who work for them have no moral claim, and certainly no legal claim, beyond such as is founded upon their contracts of employment—that anything beyond this which they do for the benefit of those subject to their economic rule is an act of charity or generosity rather than an obligation of distributive justice.

With reference generally to the patrimonial royal idea, it is to be pointed out that, even when accepted, no answer was given to the question as to the means or marks by which was indicated the particular person who was to be recognized as the monarch. As to this, it may be said, that in general the people were willing to accept as their rightful ruler the one who by accident of descent, or result of established conquest, became the *de facto* occupant of the throne. There were always, indeed, speculative writers who held that, under certain circumstances, the people, individually or collectively, became released from their obligation of obedience to their king. But, in general, submission to those in political authority was preached; and, from the nature of the case, unless the foundations of all political authority were to be disturbed, those who held that resistance might sometimes be justified were not able to fix with any definiteness just what circumstances would support revolutionary action, nor determine the form that this action should take.

Not a few supporters of monarchy, however, took the view that under no circumstances would resistance upon the part of the governed to their *de facto* rulers be other than a religious sin as well as a political crime. This doctrine was founded upon the assertion, claimed to be supported by Holy Writ, that all governments, whatever their forms and by whomsoever controlled, and without regard to their actions, are, by the divine will, entitled to the absolute obedience of the ruled. By some it was furthermore argued that absolute monarchy, if not the only type of government divinely sanctioned, is at least the one which is the most favored by God. By others, who relied upon the idea of natural law rather than the imperative and legislative will of a personal supreme being, it was maintained that great

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nature herself as volitional—*natura naturans* (to use the scholastic phrase)—establishes certain rules and polities for the governance of men in their social and political relations; that these rules and polities are at all times and everywhere—*semper ubique et ab omnibus*—obligatory upon men, and that they are or may be revealed to men by right reason, that is, by their reason when purified of prejudice and error and rightly employed. And, according to not a few of the natural law philosophers, this reason, or rather the natural law which it reveals, points out monarchy as the best form of government. As to whether or not this same system of natural rights and duties was in turn dependent upon the will of God as its *fons et origo* there was contrariety of opinion. For the most part it was held that there was this relationship between natural and divine law. But by some, among whom Hugo Grotius may be mentioned, it was asserted that a natural law would exist and be binding, even if there were no God; although even these would not admit that there could be a dissonance between the substantive provisions of natural and those of divine law.

The weakness of the divine right theory of monarchy, even when viewed from the side of the supporters of monarchical absolutism, was that it seemed to teach that a people should obey their rulers whoever they might happen to be, and by whatever means they might have obtained their thrones. Thus any given ruler would have a precarious tenure of his throne in the sense that anyone who might, by force or fraud, displace him and obtain *de facto* possession of the throne would *ipso facto* be entitled, by divine law, to the support and obedience of those over whom he ruled. The act of dispossession, though against divine and civil law, would not operate to lessen the rightfulness to rule of the new monarch when once established in power. The efforts of those who supported the divine right theory of monarchy to escape this corollary, constitute an interesting chapter in the history of political theory, but they were never logically satisfying.

The divine theory as to the right of rulership of the particular occupants of the seats of political authority lost its influence in

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England with the final downfall of the Stuarts; in France at the time of the Revolution; in Italy since its unification; and in Belgium from the time of its establishment as an independent state. Divine right has, of course, never had acceptance in America since the foundation of our government; and, indeed, the repudiation of this theory, and of the resulting doctrine of absolute obedience of the governed, was the purpose of those clauses of the Declaration of Independence which asserts that "Governments derive their just powers from the consent of the governed," and that whenever any form of government fails to subserve the true ends of political rule—the protection of life, liberty, and the pursuit of happiness—"it is the right of the people to alter or abolish it."

Just to what extent the divine right doctrine of monarchy still prevails in Germany, and especially in Prussia, it is difficult to say. Certain it is that it finds no emphatic support in the writings of present day German political philosophers and constitutional jurists. It may be said, however, that in the treatises of some of them there are found doctrines which involve what is practically a divine right theory of the state itself—an apotheosis of political power which gives to its maintenance an absolute value, raises its acts above the plane within which considerations of ordinary morality apply, and ascribes to this political entity a welfare and a purpose other than and distinct from, and, in some cases, not even related to, the welfare of the individuals who are subject to its authority. It may be said that, in result, this apotheosis of the state leads to a demand upon the people for an implicit obedience to the demands of their government, and to an unhesitating sacrifice of their interests to its welfare, which it is difficult to distinguish from that complete submission which was predicated upon the old doctrine of the divine right of the monarch.

But if, in scientific literature, an apotheosis of the state has been substituted for a divine right theory of monarchy, it would seem that the rulers of Prussia have never abandoned the earlier idea. We find, indeed, not a few recorded utterances of Bismarck which indicate that he gave his adherence to the doc-

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trine of a divine right inhering in the very person of the ruling king, and, as is well known, the present king of Prussia has seemed to seek occasions upon which to declare that this is the conception which he holds of his right to rule. What other construction can we give to declarations such as the following:

"Each of the Hohenzollern princes was from the outset of his career conscious that he was only God's viceregent upon earth, that he would have to render an account of his work to a higher King and Master, and that he must faithfully perform the work appointed him by the Almighty to do."

"As I look upon myself as an instrument of the Lord, I am indifferent to the point of view of the present day."

"The king holds his power by the grace of God, to whom alone he is responsible. He chooses his own path and only decides his actions from this point of view."

It would appear from these and other utterances of his majesty, that he believes that the Hohenzollern family has been selected from among the other members of the human race as instruments of divine providence to rule the Germans, just as he also believes, and has frequently asserted, that the Germans have been selected out from among the other races of mankind to spread *Kultur* and political salvation to the remainder of the world. Thus he, Wilhelm, evidently believes that he gains his personal individual right to rule because he is a Hohenzollern, and the heir to the throne of his ancestors, as marked out by the rules of hereditary descent that prevail in his family. And this, of course means, logically, that this particular method of reckoning descent has direct divine approval. For the marks or criteria which apodictically indicate that the Hohenzollern family have this divine mission, there is no firmer foundation advanced than the fact that the course of history has so indicated. *Die Weltgeschichte ist das Weltgericht.* By the same judgment the Teutons have been pointed out as the protagonists of culture for all mankind.

As already noted, it does not appear that the publicists of Germany have attempted to support by their reason and logic the validity of these royal claims. Upon the other hand, there

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do not appear to be, in their philosophical writings, any attempts to refute them. This is a remarkable fact. It seems extraordinary, that in German political philosophy, the validity of the divine right claims of the king and kaiser should not have received critical examination.

As regards the people, it would appear that only the Social Democrats have developed a political philosophy which, by its premises, cannot be reconciled with these monarchical claims; and this indeed is essentially the reason why the members of this party, before the present war at least, were stigmatized by the kaiser and his "Government" as enemies of the German state. But even the Social Democrats have been restrained by prudence, or possibly by fear of penal discipline, from protesting the divine right claims of their king. In result then, we find that though the divine right theory has been often proclaimed by the present kaiser, there has been little or no attempt upon the part of German philosophers either to support or to refute it.

The patrimonial theory of rulership is of course consistent with the divine right theory; that is, it can be held that by divine intendment, the realm, its people, and their property, have been placed as property in the possession of the king. It would appear, however, that this patrimonial idea is not asserted by Wilhelm. He evidently believes that he holds his rule not as an owner but as a trustee for his people. It is, however, to be observed, this trusteeship is not deemed to be derived by the king from his people but is regarded as vested in him by the providence of God.

This royal position, it will clearly appear, carries with it a denial that his people have an inherent, or natural, or ethical right to determine the general form of government under which they are to live. That this form of government should be monarchical is placed beyond their control, as is also the particular individual who is to occupy the throne. As a matter of ineluctable logic, it would seem also to follow that the people have not the right to dictate to their monarch what his policies shall be, or the manner in which and the forms through which he shall exercise his royal powers. There is, however, nothing

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inconsistent with this conception of monarchy that the people should be granted the right to make known directly or through their representatives their opinion as to what action their own welfare demands. But that they should issue a *mandat impératif* to their ruler, is made logically impossible.

In accordance with the foregoing conception of the teleological or ontological character of monarchy, the Germans have built up their systems of constitutional jurisprudence.

In the first place they distinguish between absolute and constitutional monarchy. The latter form is one in which the monarch governs in accordance with established forms and issues his orders in the form of general laws or ordinances, and not as wholly arbitrary and casual utterances of his will. Furthermore, it is established that, with respect to certain matters at least, he will not promulgate as law propositions which have not received the approval of certain other organs of government, one of these organs being an assembly composed of persons selected by a more or less numerous electorate to represent the people's interests and desires. This constitutional form of government is saved from being logically inconsistent with the general Teutonic conception of monarchy, by the postulation of the principle that these constitutional limitations upon the ruler's freedom of action are self-set; and that the written instruments of government in which they are set forth are themselves, juristically speaking, the product of his will. Here the reference is of course to the monarchical theory as found in the constituent states of the German Empire, and especially in Prussia. In what is to follow it is taken for granted that the reader is familiar with the status of the Prussian king in the German imperial system, and with the fact that although the constitutional powers of the German emperor may not be great, these are tremendously supplemented by those which he has as king of Prussia. As king his will is decisive in Prussia, and through the control which he thus exercises over the Prussian delegation in the Bundesrath, which is the dominant imperial organ of government, his voice is powerful in imperial affairs.

According, then, to the Prussian legal or constitutional theory,

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the monarch still remains the fountain and source of law and political authority, and the sole bearer and exerciser of the sovereignty of the state, notwithstanding the fact that he may, by the grant of a written constitution, have posited for himself certain forms in conformity with which his powers are to be exercised, and agreed that in the determination of certain policies he will take no action without the approval of a majority of representatives who are elected by the people, or at least, by a certain fairly large part of them. The written constitution of Prussia in which this undertaking is embodied, may have been, as a matter of practical fact, extorted from the king by popular pressure; but, legally viewed, it is an emanation from his sovereign will. It is granted or "octroyed" by him, and not established by the people. Prussian constitutional commentators are agreed that by this instrument the king neither parted with nor even divided with the people his sovereignty. He remains as before the embodiment of sovereign power.

In truth, it is to be remembered that a written constitution has not in German public law that supremacy over ordinary statute law which is ascribed to it by American constitutional jurists, and in this respect the German theory has tended during the last fifty years to become increasingly pronounced. The leading commentator upon German constitutional law is undoubtedly Dr. Paul Laband. In his *Das Staatsrecht des deutschen Reichs*, he writes as follows:

"There is no will in the state superior to that of the sovereign, and it is from this will that both the constitution and laws draw their binding force. The constitution is not a mystical power hovering above the state; but, like every other law, it is an act of its will, subject, accordingly, to the consequences of changes in the latter. A document may, it is true, prescribe that the constitution may not be altered indirectly (that is to say, by laws affecting its content), that it may be altered only directly, by laws modifying the text itself. But when such a restriction is not established by positive rule, it cannot be derived by implication from the legal character of the constitution and from an essential difference between the constitution

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and ordinary laws. The doctrine that individual laws ought always to be in harmony with the constitution, and that they must not be incompatible with it, is simply a postulate of legislative practice. It is not a legal axiom. Although it appears desirable that the system of public and private laws established by statute shall not be in contradiction with the text of the constitution, the existence of such a contradiction is possible in fact and admissible in law, as a divergence between the penal, commercial, or civil code and a subsequent special law is possible."[1]

If one wishes to see how far apart our own constitutional theory is from that of the Germans, one may compare with these views of Laband the words of Chief Justice Marshall delivered in the famous case of Marbury v. Madison, in 1803, in which he fixed once for all in our jurisprudence the doctrine that no measure enacted even by congress itself will receive judicial recognition or enforcement if its substance cannot be harmonized with the provisions of our national Constitution.

It follows from the Prussian constitutional conception that the part played by the elected representatives of the people in the enactment of laws and in the adoption of public policies is one quite different from that which is played in countries whose constitutional systems are founded upon a democratic basis. According to the doctrine almost, if not quite, unanimously held by German jurists, the people through their representatives participate not in the creation of law, but in the determination of the contents of a proposition which is to be submitted to the sovereign for the exercise of his supreme legislative will. And not until that will has been approvingly exercised does the measure become legally executory (*Gesetzbefehl*). Essentially speaking, then, the situation is this. The ruler, as a matter of grace and expediency, is pleased to learn the wishes of his people regarding a proposition of law or the adoption of a public policy, and to obtain such information regarding its wisdom as a representative chamber is able to provide; and these wishes

[1] Quoted by Borgeaud—Adoption and Amendment of Constitutions (Eng. trans.), 68.

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and this information he necessarily takes into consideration in determining the exercise of his own sovereign will. But never does he regard these factors as controlling in any affirmative sense. So long as the constitution which he has promulgated exists, he agrees not to act contrary to its provisions with regard to the matters which are therein specified. But never for a moment does the German ruler admit himself to be under a legal or even a moral obligation to give effect to an expression of the will of the representatives of the people of which he disapproves.

This relationship in which the king stands to his popularly elected legislative chambers interprets many features of German public life which seem strange to English and American observers. It explains in the first place the fact that it is considered a moral and wholly justifiable practice for the king and his personal advisers—"the Government" as they are called—to control so far as they are able, not only the elections of members to the representative body, but by rewards and other forms of political pressure to influence the votes of the representatives after their election. It explains furthermore the policy of the "Government" in playing off one party or faction against another, and thus, through the *bloc* system, obtaining a majority vote in favor of action which the government desires. It explains also the fact that not even the first steps have been taken in Germany in the development of responsible parliamentary government whether of the English or of the French type. It is indeed recognized by all German publicists that such a system is absolutely incompatible with the German conception of monarchical power.

It is true that irritation, at times intense in character, has been felt and expressed against the assumption by the emperor of the right to direct and control foreign affairs by his own personal acts and words; but this has been, not because his acts have been conceived to be in derogation of the power of the representatives of the people or of a ministry which they support, but because, under the imperial constitution, he is required to act through his chancellor, who in turn is supposed to exercise

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his power in and through the Bundesrath, which body in turn represents the "Governments" of the several states of the empire. Since the downfall of Bismarck, and especially since the retirement of his successor Caprivi, the emperor has selected as his chancellor and president of the Prussian ministerium men who have been willing in very large measure to subordinate their own wills and judgments to that of their imperial master. Thus, in fact, the influence of the emperor has been very great, especially in foreign affairs; and while this has been at times disapproved of, there has never hitherto been any movement, seriously pressed, to subject his will to the control of the popularly elected branch of the imperial parliament.

The monarchical conception in Germany explains, still further, the right which is freely exercised by the "Government," of dissolving the elected chamber whenever other methods of obtaining its support for a government measure have failed; and, it may be said, so powerful is the official influence that may be exerted in the ensuing election, that in all cases the result has been that the newly chosen chamber was of the desired political complexion. Von Bülow in his *Imperial Germany* complains that the Germans lack political ability, by which, as he explains, they show a disposition to form a multitude of minor parties based not on broad public principles but upon narrow, particularistic, and personal interests. It would seem however, that this failure of two or more strong political parties to develop has been due in no small measure to the attitude which the "Government" assumes towards all political parties. The one strong political party—the Social Democrats—which has been formed in German imperial politics, is strong in numbers rather than in influence, and, moreover, occupies a very particular position, for, as Von Bülow frankly says, it has, from the viewpoint of the "Government," no right to exist. He flatly stigmatizes its members as enemies of the German state—enemies for the overthrow of whom any means, including force when possible, may rightfully be employed. As to the reasons why the Social Democrats are held in such peculiar detestation by the "Government," shortly stated, it may be said that it is

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not so much their legislative program which is disapproved of, as it is that their fundamental political doctrines are in conflict with the monarchical conception of the empire and of Prussia. This is made abundantly clear by reading between the lines of Von Bülow's book.

Finally, it may be said that the monarchical conception in Germany explains the open and avowed measures which are taken by the ruling authorities to control the formation and expression of a popular opinion with regard to matters of public policy. Not only is there kept a strict control over unofficial expressions in the press, as the numerous prosecutions for *lèse majesté* testify, but, and more especially, governmentally inspired articles are constantly published in the leading newspapers in order that the people shall be led to take a favorable view regarding public policies which are approved by the "Government."

This point is of an importance that warrants, in order to make it clear, giving the words of Dr. Hasbach, the author of an important work entitled *Die Moderne Democratie*, published in 1912. In an article published recently, in which he states more specifically the function which public opinion plays in the modern constitutional state, Dr. Hasbach says:

"Who forms public opinion? In democracy and parliamentary monarchy (England) it is created exclusively by parties; in constitutional monarchy (i.e. Germany) on the other hand, by parties and the Government. For a full understanding of this important difference we first must clearly distinguish between parliamentary and constitutional monarchy. In parliamentary monarchy the influence of the monarch is as a matter of fact so far suppressed that here too the stronger party opinion determines the destiny of the country, while in the constitutional monarchy the prince as joint possessor of the legislative power, and as the possessor of the executive, exercises a considerable influence upon the formation of public opinion. The ministers nominated by him introduce bills into parliament; they defend them against the criticism of representatives whom they are compelled to face; the prince addresses messages to parliament;

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he can dissolve it and thereby take a position on definite questions; official newspapers defend the attitude of the government; party organs which approve the policy of the government support it or open their columns to it; the government seeks to influence representatives, etc."

"These are methods," Dr. Hasbach continues, "some of which are also understood in America; in America the President addresses messages to Congress; presidents and governors attempt to influence the legislative power; there are also newspapers which support the President and governors against the legislative assemblies if they consider the former's policies advantageous."

This is true, but the important fact to be observed is that in America the President and the governors of the states are themselves the leaders of their parties and are representatives of the people. The stronger public opinion which thus finds expression in state action is therefore a popular opinion, and is not one which is largely determined by the judgment of persons who are not responsible to the people and who only in a purely fictitious sense can be said to represent them.

In summary, then, we may ask: Just what is the part played by the elected representatives of the people in the diet? Their function is a four-fold one: (1) They constitute an avenue of information through which the "Government"—the king and his advisers—may learn regarding the economic and social conditions of the people, and of their desires; (2) they constitute an organ of advice,—that is, the representatives, individually, or through their collective wisdom, give what amounts to advice to those in authority; (3) they criticize the acts of the government,—bring its acts, or many of them at least, to the bar of public opinion; (4) they have a veto power over the matters enumerated in the constitution. This veto they can exercise by refusing, by a majority vote, to approve legislative propositions laid before them by the king. But, even in this negative sense, it is to be observed that they cannot prevent the execution of any laws already enacted by refusing to approve the necessary appropriations. If these appropriations are not made by the chambers, the king is generally conceded to have

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the constitutional right to raise and expend what funds are necessary in order to carry out the laws already upon the statute books. This Prussian theory of the budget is based upon the doctrine that inasmuch as only the will of the king is competent to create law, the diet cannot, by its action, defeat the operation of law.

The function which the chambers perform in the creation of law is thus limited to the vetoing of propositions of new law of which they disapprove. And even as to the new law which is approved by them, the constitutional theory is that the part played by the chambers in its establishment is limited to a participation in the determination of the substance or material content of the law. That which gives legal life and force to this substance is the will of the king as manifested by his promulgation of the project in his name as law. And it does not need to be said that the king is at all times free to refuse to promulgate propositions which have received the assent of the chambers.

Contrasted with the ethico-political-constitutional theories which have been set forth as characteristic of German political thought, are the theories of other countries such as England, France, Italy, Belgium, and the United States.

The political philosophy of England since 1688 at least, of France since 1789, and of the United States since its foundation, is squarely committed to the proposition that all political authority comes from the people, and is not vested in the rulers as an original and inherent right.[2] This is not the assertion of

[2] The constitution of France, if its fundamental laws can be regarded as constituting a complete instrument of government, does not contain an explicit statement of popular sovereignty, but the principle certainly finds acceptance in her constitutional jurisprudence. Perhaps the clearest statement of the doctrine in formal terms is to be found in the constitution of Belgium, adopted in 1831, in which the following declarations occur: "Art. 25. All powers emanate from the people. They shall be exercised in the manner established by the Constitution . . . . Art. 29. The executive power is vested in the King, subject to the regulations of the Constitution. . . . . Art. 129. No law, ordinance, or regulation of the general, provincial, or communal government shall be obligatory until after having been published in the manner prescribed by law. Art. 130. The Constitution shall not be suspended, either in whole or in part."

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the merely moral doctrine that the people have a revolutionary right to resist political oppression, and that thus, in a sense, all just governments may be said to derive their right to be from the consent of the governed. This, indeed, is asserted, but the doctrine is much more than this. It includes the constitutional principle that, as a legal proposition, the rulers possess only delegated authority, and the legal limitations which circumscribe their official acts are not self-set, but are imposed by laws which draw their force from the popular will as authoritatively expressed at the polls, in conventions, or in representative legislative bodies.

Corresponding to the constitutional doctrines of these countries is the ethical doctrine, widely held, that a people have an original, natural, and inalienable right to determine the form of government under which they are to live and to select the persons who are to administer it. There is also the doctrine that, as a practical proposition, the best political results may be expected from a government founded upon popular consent and controlled by public opinion, just as in Germany there is an equally general belief that the best practical results are to be obtained from a government in which the popular will is not controlling.

Let us then turn to an examination of the validity of the constitutional, ethical, and practical premises upon which German political practices are founded.

As regards the theory of German constitutional law that all legal authority is deemed to be derived directly or indirectly from the king, it may be said that, viewed simply as a juristic theory, it is not open to criticism, for the same reason that no constitutional theory, considered *in abstracto*, can be examined as to its validity. A constitutional theory is a purely formalistic matter, and one can start with any premises which he may desire to assume. The logical consistency with which it is applied may be questioned, or its applicability to given facts for the purposes of interpretation put in issue; but, viewed simply as a creation of analytical jurisprudence, the attempt to examine

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its validity is as meaningless as it would be to ask whether it is correct to use "X" or "Y" to indicate the unknown quantity in algebraic expression. Thus the application of a constitutional theory, but not the theory itself, may be questioned. And, of course, given an existing constitutional system, it might be possible for commentators to disagree as to the fundamental juristic premises upon which it is based. It would appear, however, that German publicists are practically agreed in giving to their system of public law that interpretation which has been set forth in this paper, just as there is an equal agreement between French and American commentators that the French and American constitutional systems are founded upon the principle that all political power and all legal legitimacy may be traced back to a delegation of authority by the governed.

Turning to the ethical aspect of the German conception of monarchy, we are met by a proposition the fundamental premises of which need justification. Here we are confronted with the assertion that the governed have not an original inalienable right either to determine the form of government to whose control they are subjected, or to dictate who shall operate or control the operations of this political machinery.[3] This is a fundamental question of political philosophy upon its ethical or teleological side, and a considerable volume would be required for its satisfactory discussion. It may, however, be pointed out that those very persons who would deny that the German theory can be justified, and who assert that every people has an inherent and inalienable right to control their own government, have never been willing to push their premises to anything like a logical conclusion. They have always denied to classes of per-

[3] The history of political theories shows that there have been not a few philosophers who, admitting an original ethical right in the people to control their own political destinies, have asserted the possibility of its complete alienation to their rulers, so that when this act of surrender has been once performed, they are as wholly without the right to control their rulers as though they had never possessed it. It is immaterial for the purposes of this essay to distinguish between the status of those who once had the right of self-government but are conceived to have surrendered it, and those who are regarded as having never possessed it.

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sons the rights of active citizenship, and even as to those who are endowed with political privileges, practical necessity has forced a denial to them of more than a modicum of political control. It may, furthermore, be observed that if the right of individuals to determine the form and to control the operations of their government be stated as an absolute and apodictic principle, this right must be conceived of as inhering in each individual, and, if this is so, it is extremely difficult to harmonize with it the practice of regarding as controlling the vote of a numerical majority of an electorate or of a representative body. And, indeed, it is only by the veriest fiction that a so-called representative chamber, however selected, can be said to represent the whole people and give utterance to what is truly their general will.

Those, therefore, who assert that the constitutional doctrine of popular sovereignty is founded upon an inherent and inalienable ethical right of the people to control their own government, are placed in the dilemma of holding either that the principle is an absolute one, in which case it becomes an impossible one to realize short of the destruction of the government itself; or to admit that the right is a relative one, depending upon the circumstances of time, place, and the intellectual and moral qualifications of the persons concerned. But if this second alternative be adopted, is not the principle itself abandoned? If practical or pragmatical considerations are to govern, is it not at least open to argument whether, as regards any given people, as good results may be obtained from a form of political rule in which supreme and controlling power is vested in an hereditary monarch, conceived of, constitutionally, as the possessor of the sovereignty of the state, as from a regime under which public authority is distributed among a number of persons or organs all of whom are legally viewed as exercising a delegated authority derived from a postulated popular source?

These are questions which it is impossible to answer in a single paper of necessarily moderate length. It is proper, however, to suggest that a solution of them may be found in the doctrine that whatever its form or the constitutional theory

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upon which it is operated, the requirements of an ethically legitimate government are present just in so far as, through that government, the true and permanent welfare of its citizens or subjects is realized. In short, that every government is but a means for the realization of this end, and that each of its characteristics must find their justification in this fact. Thus a monarchy, if established and maintained, must find its right to be in the advantages to be obtained from a centralization rather than a decentralization of public power, and not because the occupant of the throne has an inherent or divine personal right of rulership. If hereditary descent is recognized as conferring a legal right to rule, this must be, not because there is conceived to be any ethical right that flows through the veins of a particular family and is capable of transmission from parent to child, but because this method of determining the royal succession will give better results than some other mode of selection. If certain constitutional limitations are placed upon the legal powers of the ruler or of other functionaries of the state, these too must find their justification in their practical value when put to the test of actual experience. If, finally, a certain amount of political power is vested in the hands of a larger or smaller part of the whole citizen body, the ethical criterion must be the character of the results thereby obtained.

If, now, we apply this doctrine in our examination of the German philosophy of the state, we find that, upon its ethical side, that philosophy is open to criticism only in so far as by it the welfare of the state, or of those who control its government, is divorced from the welfare of the whole people, or that that welfare is falsely conceived, especially in its relation to the welfare of other peoples or of all humanity.

Having examined the constitutional and ethical phases of the German conception of monarchical as contrasted with more democratic or popular rule, we turn now to a consideration of the practical grounds upon which German political practice is founded.

The refusal upon the part of the "Government" in Germany to permit the popular will as represented in the legislature to

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exert a controlling influence in the determination of public policies is of course not predicated upon the purely technical and legal premise that sovereignty finds its origin in the monarch. Nor, as we have already seen, is it justified by any claim that political rulership need not necessarily be for the benefit of the state or its people. Rather, it would seem to be founded upon a conviction that the problem of government is, by its very nature, one, the satisfactory solution of which cannot be secured by surrendering a controlling influence to the people. And, in turn, the reason why the government of the state is held to be of this essentially unpopular or undemocratic character would seem to be compounded of two convictions.

The first of these beliefs is that, as a practical administrative proposition, the problem of government is one which requires the exercise of faculties of judgment, and of executive oversight and control, which it is not possible for a popular electorate, however enlightened and well disposed, to possess and exercise. The second belief, which would seem to have at least a certain amount of currency, even if it cannot be said to be generally held, is that the ultimate end for the realization of which the state exists is something else and higher than the welfare of the citizens as individuals, whether distributively or collectively considered.

Upon the face of it, the proposition that the efficient carrying on of the national government of a state of any considerable size is an administrative task in the performance of which it is not practicable to admit any considerable amount of democratic participation or control is not an unreasonable one, and can be met only upon a basis of fact. Certain it is that, in its actual operation, German governmental forms and administrative methods have produced results, which, from the standpoint of administrative efficiency, and official honesty, are superior to those which any other government of the world has been able to produce. Not only have the social and industrial prosperity of the people been wonderfully advanced, and the general level of education raised to a high degree, but a state has been created which is of tremendous military strength. This much must be admitted.

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What, then, if anything, can be said to offset the logic of this result?

In the first place it can be said that the prosperity thus politically produced is apparent and temporary rather than real and permanent; that, though certain desirable results have been reached by this oligarchic and autocratic government, the political education of the people has been neglected; that the growth of a capacity in the people to form an intelligent public opinion has not been fostered and has, on the contrary, been discouraged; that there is inherent in this form of government a tendency unduly to exalt the military and administrative efficiency of the political machine as an end in itself, at the expense of the more vital interests of those for whose benefit that machine exists and operates; that by the denial to the general mass of the people of the right to exercise a controlling influence in their own government, they are deprived of a consciousness of power and responsibility which, if possessed, would widen their interests, broaden their intellectual powers, and increase their appreciation of the ethical obligations laid upon them by their national and international life; and, finally, that, at the very best, this form of autocratic or oligarchic government makes ever present the danger that those who happen to have the reins of public power in their hands will use that power ignorantly or selfishly, or both.

It is probably true that Prussia and the other German states have escaped this last danger to a greater extent than the general experience of other peoples would lead one to expect. The reasons for this are discoverable, although there is not space for their discussion in this paper. However, the character of the agrarian legislation in Prussia, and the so-called *Bodenpolitik* in the cities, are sufficient to show that the danger of legislation in behalf of the special interests of those in power has been by no means wholly avoided.

Admitting the general excellence of the Prussian administrative system and the material prosperity and improvement of the social conditions of the people which have been secured through state action, the general result has been demonstrated

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to be a disastrous one, because it has made possible, if indeed it has not actively stimulated, the development of an ideal of national greatness which is inconsistent with a true conception of civilization,—that, in short, beneath its surface prosperity, there have developed potentialities of evil for the realization of which only time and opportunity were needed.

Thus the critics of *deutsche Kultur* rightly claim that the successes which have been the product of the German constitutional and administrative system have been of a materialistic character and have lacked true ethical and spiritual elements—that right has been sacrificed to might, political liberty to state authority, and individual spontaneity and freedom to organized efficiency; with the result, that state action has freed itself from the limitations which ordinary morality imposes, and the entire mind of the people has been corrupted; and that, with their pride swollen with a contemplation of the material success which they have gained, the Germans have lost respect for, and appreciation of, the value of a civilization and political ideals which differ from their own. Misled by this distorted perspective, the Germans have adopted a *Weltpolitik* which has brought them into conflict with other nations and made inevitable the terrible conflict which is now devastating almost all Europe and has, indeed, kindled the flames of war in the four quarters of the globe.

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LEGISLATURES AND FOREIGN RELATIONS

DENYS P. MYERS

In a previous paper foreign relations as a phase of governmental activity were considered chiefly as an international phenomenon. Such relations were there discussed largely in their political bearing and some attempt was made to deduce from practice the considerations which affect foreign offices and the conditions encountered by diplomatic personnel. The problems of secrecy in negotiations and of secret treaties were examined and an effort made to indicate how much knowledge of both may be justifiably concealed. The present paper is a study of legislative control over foreign relations.

Systems of legislative handling of foreign relations may be distinguished as of three types, which we may designate as the continental, the executive, and the American. The American type is characterized by an imposed agreement between the executive and legislative departments of government before treaties can become binding upon the state. The continental type is characterized by a less complete dependence of the executive upon the legislative department in respect to treaty ratification. The executive type is characterized by an almost complete independence of the executive respecting treaty ratification.

All systems recognize definitely that the conduct of foreign relations is an executive function. None denies the patent facts that it is the place of the executive to speak and act for the state, and that, in all matters not definable as legislation, the minister can definitely bind the state. Innumerable decisions under all systems are reached by the department of foreign affairs without any but the executive branch of the government knowing anything of them until they are recorded facts.

Even where diplomatic correspondence is regularly and extensively published, it is fairly innocent in appearance. What

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is not said is usually more important than what is; and the real, actuating motives of policy in a given case are seldom officially set down in type anywhere. If what lies behind must be known, the secret session of a legislature or of its committee or a verbal conversation is resorted to everywhere. Such methods—being universal—must have reason behind them, for they are practiced by the most radical democracies even more than under the autocratic procedure which is being widely criticized.

There is little similarity in practice respecting the elements of foreign relations which come before legislatures. The British parliament probably exerts much influence on policy. In several European countries foreign policy sometimes becomes a factor in the political defeat of ministries under the cabinet system. In Pan-America, including the United States, legislative influence on foreign policy is very slight.

On the other hand, it will be found that legislative connections with foreign relations are somewhat associated in most systems with war-making. The connection is closer or more remote as the system is based upon European historical foundations, which formerly considered the conduct of foreign relations as subordinate to war-making.

The conspectus appearing at the end of this paper indicates in an imperfect way the conditions existing as a result of constitutional provisions and of executive or legislative practice. Such a tabulation cannot be entirely scientific because in different states identical practices are modified in action and at different periods. Moreover, in one state a stipulated method may be extensively employed while in another the same method, though stipulated, may be seldom used. Ministerial discretion in relation to parliamentary intervention is also a widely varying circumstance. The Swedish system, for instance, is at first sight much less responsible to the Riksdag than is the American one to congress. Yet in Sweden at the "remiss" debate any member may ask that the conduct of any minister be referred for consideration to the constitution committee, which is a joint committee of twenty members elected by the proportional method from both houses. The committee cannot suppress a

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motion on foreign affairs, though this must be referred to the committee before a vote. Then, if the house decides in the affirmative, the minister must answer the interpellation, on which debate may occur, but without a vote. Thus any question relating to foreign affairs can be forced into discussion by purely legislative decisions. In the United States the congress can call upon the President only for information, which is furnished by the secretary of state for transmission, "if not incompatible with the public interest." Behind the use of this phrase and the frequent refusal of information as a result many legitimate reasons may lie. None but executive discretion controls the publication of documents in the annual *Foreign Relations* volume, which was issued as a house of representatives document up to 1905,[1] and only executive discretion determines when the volume shall be issued, its appearance at present being delayed six years after the twelvemonth with which it deals. Thus, variations in detail of national systems render bald descriptive terms inaccurate as a basis of conclusions.

It is consequently necessary as well as desirable for the clear understanding of the actualities dealt with to sketch in succession what have been indicated to be the three distinct types of conduct of foreign relations. Since the practice of foreign relations as a generic element in government began in Europe and because international politics has always been dominated by the great powers, a historic logic will be obvious in the experiences of the European states.

THE CONTINENTAL TYPE

The continental is the most complicated system, and can be best appreciated by keeping constantly in mind that foreign affairs were originally the sole prerogative of the ruler and that the modifications of that prerogative were brought about by the assertion of popular rights through legislative channels.

The French system is chosen to illustrate the type because of the extraordinary constitutional history of the country.

[1] Since 1905 it has borne the seal of the department of state.

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Democracy burst forth in Europe as a system of government, rather than a condition, in the French Revolution of 1789. Even before then the *États-généraux* held an exceptional position on the continent of Europe. After that date, until the constitutional laws of 1875, France, alternately monarchy and republic, had fourteen different constitutions. Nowhere else in Europe has there been a better laboratory of political science. The fact that the constitutional laws of 1875 have lasted for forty-two years indicates the attainment of stability. The law of July 16, 1875, "*sur les rapports des pouvoirs publics*,"—the provision adopted after a unique constitutional experience—indicates what was deemed safe and workable. It provides:

"Article 8. The president of the Republic negotiates and ratifies treaties. He gives the chambers information concerning them as soon as the interest and safety of the state permit.

"Treaties of peace, of commerce, treaties which engage the finances of the state, those which are relative to the status of persons and to the right of property of Frenchmen abroad are definitive only after having been voted by the two chambers. No cession, no exchange, no annexation of territory may take place except by virtue of a law.

"Article 9. The president of the Republic may not declare war without the previous assent of the two chambers."[2]

The constitutional law of February 25, 1875, "*relative à l'organisation des pouvoirs publics*," contains the following:

"Article 6. The ministers are conjointly responsible before the chambers for the general policy of the government, and individually for their personal acts.

[2] The French text reads:

Article 8. Le président de la République négocie et ratifie les traités. Il en donne connaissance aux Chambres aussitôt que l'intérêt et la sûreté de l'Etat le permettent.

Les traités de paix, de commerce, les traités qui engagent les finances de l'Etat, ceux qui sont relatifs à l'état des personnes et au droit de propriété des Français à l'étranger, ne sont définitifs qu'après avoir été votés par les deux Chambres. Nulle cession, nul échange, nulle adjonction de territoire ne peut avoir lieu qu'en vertu d'une loi.

Article 9. Le président de la République ne peut déclarer la guerre sans l'assentiment préalable des deux Chambres.

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"The president of the Republic is responsible only in the case of high treason."[3]

A mere glance at these provisions shows that the constitutional system for the conduct of foreign relations in France takes no cognizance of policy and does not attempt to interfere with diplomatic action. The following are details of parliamentary control over treaty-making:[4]

1. The chambers may specifically authorize the executive to conclude treaties, thus waiving their right to pass upon a document which otherwise would come before them. In this case the legislative department fixes a policy within its constitutional control.

2. On the other hand, executive freedom of action cannot be restrained by legislation regulating matters to be made the subject of future treaties. In this case is recognized the impotence of the legislative department to dictate to the executive in matters which the latter must freely agree upon with a third party, a foreign government.

3. The chambers do not presume to revise the text of a treaty. Where they act they pass a law approving the treaty text, integrally annexed thereto. The apparent reason is that the legislative department does not assume to dictate specifically what must be negotiated but confines itself to stating definitely what it does accept or, in a converse case, what it does not accept.

4. Treaties involving a modification of territory must be approved by the chambers. The soundness of the provision is evident when one recalls that changes in territory involve changes in population, and therefore in the status of citizens. Approval

[3] The French text reads:

Article 6. Les ministres sont solidairement responsables devant les Chambres de la politique générale du gouvernement, et individuellement de leurs actes personnels.

Le président de la République n'est responsable que dans le cas de haute trahison.

[4] Louis Michon, *Les traités internationaux devant les Chambres*, passim; Joseph Chailley, *De l'Autorité gouvernmentale compétente pour passer les traités internationaux*, (Auxerre, 1882), 138–342; Pierre Barisien, *Le Parlement & les traités —Étude sur le fonctionnement pratique de la loi du 18 juillet 1875 (Art. 8)*, (Paris: Arthur Rousseau, 1913).

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must be had both for acquisition and for relinquishment of territory, but in practice the constitutional law is not construed to include pseudo-protectorates, which, in the words of Frantz Despagnet, "are only disguised occupations, as they are equivalent to an extension of sovereignty." Such treaties have been chiefly negotiated with African and other tribes. Barisien found forty-five such treaties not submitted to the chambers and but one which was. In the latter case action by the chambers seems to have been a method of making engagements taken in the name of France by a French explorer governmentally regular. On the other hand, treaties of delimitation, which are usually negotiated with European métropoles, are submitted to the chambers with rare exceptions. Barisien lists sixteen so submitted.

5. Treaties of peace must be approved by the chambers. This provision is apparently based objectively on the supposition that, the state being a victor, there would be acquisition of territory and, the state being defeated, there would be relinquishment of territory, or an indemnity. (Cf. No. 7.)

6. Treaties of commerce, including their most frequent form of treaties of friendship, commerce and navigation, must be approved by the chambers. Treaties of an accessory character are subject to the same condition. The apparent reason is that commercial matters are primarily a legislative consideration, and that the executive in negotiating treaties of commerce essentially acts as direct agent of another department of government.

7. Treaties engaging the finances of the state must be approved by the chambers. This provision is interpreted as relating to treaties which can be executed only by engaging the finances of the state. Its scope in practice has been held to include loan, telegraphic, postal, postal money-order, parcels-post and monetary conventions. The evident reason is that control of the public moneys rests with the legislative branch of the government.

8. Treaties relative to the status of French persons abroad must be approved by the chambers. This provision apparently found its way into the constitutional law on account of the casual

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circumstance that at the time (1875) certain treaties of the category were pending. The opinion of French publicists shows a trend against considering extradition treaties as subject to approval.

9. Treaties relative to the property rights of Frenchmen abroad must be approved by the chambers. Municipal legislation respecting foreigners is an essential attribute of the chambers and this provision seems to have contemplated that the chambers, by approving treaties defining property rights of Frenchmen abroad, would thereby become obligated to reciprocate legislatively for foreigners in France.

10. Treaties of arbitration and arbitral compromis are assimilated to treaties requiring approval by the chambers, if the powers of the arbitrators exceed those of a judge or if they relate to the previous categories of subjects.

11. Articles of treaties not as a whole falling within the above categories must be approved by the chambers. These are usually treaties engaging the state to international administrative regulations or tending to secure uniform practice. Municipal laws must be changed to conform or new laws passed, and it obviously makes for harmony to have both the international and national phases of the problem acted upon by the legislative branch of the government.

Treaties which do not require approval by the chambers are:

1. Extradition treaties, on which there is dispute, but on which opinion tends to this conclusion.

2. Administrative treaties, by which term is understood those relating particularly to the fixation of various documentary forms and those relating to the manner or method of conducting affairs which originate in one country and are completed in another.

3. Political treaties of all kinds, unless they fall in whole or in part within the categories enumerated above.

4. Treaties of alliance.

5. All treaties until both the interest and the safety of the state permit their transmission to the chambers. This substantive constitutional provision leaves it to executive discretion

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when any treaty shall be brought to the knowledge of the chambers. For treaties not requiring approval by the chambers, it therefore legalizes and regularizes so-called secret treaties.

Substantially this system obtains in all the states of Europe, except Austria-Hungary, Great Britain, Russia, Portugal and Switzerland.

In so far as this continental system relates to treaties, it is probably the most fluid system. It leaves political treaties within the control of the executive, which, however, is dependent upon a parliamentary majority for its tenure of power. Political treaties, and policies not embodied in treaties, are therefore subject to popular control, for no cabinet will deliberately adopt policies or political alignments that would result in its own defeat. Questions of policy are things of delicate nuance, and it is the cabinet—a small body of men closely in touch with conditions—rather than the legislature—a large body of men incapable of reaching careful conclusions on subjects of pure reason—which is intrusted with appreciating what political theory is best at a given moment for the state to adopt in its foreign relations.[5] Most nonpolitical treaties, on the other hand, and those engagements affecting attributes of the sovereignty for which the legislature is primarily responsible depend upon its approval. Such treaties invariably affect the citizen or depend upon legislation for their effectiveness. Political treaties are engagements of the state as a collective entity and as such are logically concluded by an organ representing the collectivity. Nonpolitical treaties, on the other hand, are engagements on behalf of the individuals who make up the state, and as such logically require for their conclusion and internal force the assistance and consent of an organ representing the individuals. This seems to be the explanation of the distinction customary in what we are terming the continental system, which,

[5] A legislature, it is true, often reaches decisions involving very delicate distinctions, but these are not in the domain of pure reasoning. They are possible because of the representation of numerous physical interests, all of which being heard equally, a delicate resultant of forces emerges in the decisions.

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respecting treaties, according to Ebreu,[6] is the most satisfactory system.

This continental system viewed as a system of diplomacy employs a more or less hereditary body of diplomats, and throughout their activities historical habits color public business. European archives—and this applies all over the continent—are too full of dead precedents imperfectly sloughed off. One instance will suffice. The ambassador began life in Europe as a cross between a plenipotentiary and a privileged spy. He wrote home interminable letters of gossip and business and fear-ridden speculation and he served to support thereby the now obsolete system of enmity. All European diplomatic business was conducted with a precision of detail and a slavish following of forms that can be equalled only by the rarefication of idiocy which too often characterizes American municipal court procedure. Great improvements in this respect have taken place in European diplomacy, but it is not many years since a European publicist commented to an American that the annual volume of *Foreign Relations* interested and instructed him more than any other such publication because of "the freedom and originality with which questions were treated."[7]

European policy has been similarly trammeled by historical considerations, and the machinery for handling the conduct of foreign relations described here as the continental system has not radically affected the condition. The general tendency of the last few decades toward objectivity and the emergence of new political problems of a purely modern character in foreign relations have been the principal levers effecting change. This process had caused many improvements before the war and the new political conditions after it will certainly accelerate fundamental betterments.

[6] Henri Ebreu, *Le Droit de traiter dans ses rapports avec la forme de l'État et avec la forme du gouvernement* (Valence, 1900).

[7] Cited by John Bassett Moore in *A Brief Sketch of the Life of Francis Wharton* prefixed to Wharton's *Revolutionary Diplomatic Correspondence*, I, xv.

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THE EXECUTIVE TYPE

The executive type of the conduct of foreign relations has been less affected by parliamentary institutions than any other. Yet the differences are at first sight not connected with foreign affairs. Systems of handling treaties, of taking cabinet decisions, training and appointing diplomats, publishing documents, etc., may be almost identical and yet the systems as a whole will fall into different categories. If one should attempt to lay down a rule that would serve to test the systems indicated, it would probably be found in answering the question where the sovereignty[8] of the state centers. The practical answer to this question is a matter capable of much technical disputation, and there is no single criterion for determining it. Where there is a constitutional legislature a tendency will be found to make it sovereignty's residing place, and this is a normal trend because it is the people from whom sovereignty emanates and who decide what agent of government shall exercise its attributes. A sovereign people is strongly tempted to make all delegation of sovereign power as direct as possible; but it must be borne in mind that power is not necessarily better exercised for being employed at its source. In fact, every constitution complicates the problem of determining in detail the distribution of sovereign powers.

The executive system of government will therefore be found to be the simplest of all, but it exists in its pure form in no considerable modern state. Abyssinia, Afghanistan, Persia and Siam are current instances. Japan represents a transitional stage in which legislation is popular, but in which most

[8] Sovereignty is in this case internal sovereignty, not the external sovereignty of international law. For our purpose the theoretical origin of sovereignty in the people is not so important as what organ of the government actually and effectively represents the people as their sovereign agent. Very useful discussions of the subject are "The Limits of Sovereignty" in *Essays on Government* by A. Lawrence Lowell and the "Nature of Sovereignty" in *Studies in History and Jurisprudence* by James Bryce.

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other functions are left to the chief of the state.[9] Germany represents a slightly further development, complicated by local and historical considerations. Great Britain represents a stage in the transference of sovereignty to the people that is really complete as to theory, but is in many respects not evident as to form. Thoroughly to appreciate the executive type of foreign relations, therefore, it will be convenient to examine the methods of Russia, Germany and Great Britain as typical of various stages of the executive type. As legislation, the first function of government, is the first to be affected by direct popular action, so foreign relations is the last and the least capable of useful popular control.

Russia before the March, 1917, revolution presented the executive type in a fairly pure form. By sections 12 and 13 of the Russian fundamental laws the tsar was supreme respecting all relations of the empire with foreign powers. To him was reserved the management of foreign policy, he declared war, concluded peace and concluded treaties with foreign powers. These prerogatives were jealously guarded and were excluded from the competence of the duma. Interpellation, according to the manifesto of August 19, 1905, was subject to the following provisions:

"Section 6, 57. Notices of interpellations regarding an alleged infringement of the law by ministers, chiefs of departments or subordinate officials must be signed by at least thirty members of the duma and handed to the president, who shall submit them to a plenary session.

"58. If the majority approve the interpellation, it shall be communicated to the minister or chief of department concerned.

"60. Ministers or chiefs of departments shall reply within one month of the receipt of interpellations, either giving explanations or intimating why it would be impossible to do so."[10]

[9] Turkey cannot be called exactly in a transitional stage, for it is not certain that popular government will develop normally in that state. Nor can the sultan be considered as entirely sovereign since he is subordinate both to the Koran and the Sheri, or sacred law, which *fatwas* can only interpret, not alter.

[10] London *Times*, weekly edition, 1905, page 533.

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It will be noticed that the minister must reply to an interpellation concerning an alleged infringement of law.

Foreign relations were, however, customarily discussed in the duma only when the budget of the ministry of foreign affairs was presented by the budget commission. The duma possessed the power of refusing to vote a budget credit for the ministry. Sir George W. Buchanan[11] stated that the foreign minister "can make a statement on foreign policy only by special command of the emperor." It would seem, then, that the tsar had complete control of foreign relations with the exceptions of depending upon the legislative body for the necessary funds and of the necessity of satisfying the same body that laws had not been infringed.

Much more complicated is the German system. This is partly due to the circumstance that the empire was built around Prussia, including the Prussian constitution; and partly due to the political theories of Bismarck, which included the idea of divine right. It is a system designed to attain results rather than to obey any logical tenet of political science.

The real responsibility, or lack thereof, is to be found in the constitution:

"Article 11. The presidency of the federation is vested in the king of Prussia, who bears the name of German Emperor. The Emperor shall represent the Empire among nations, declare war, and conclude peace in the name of the same, enter into alliances and other conventions with foreign countries, accredit and receive ambassadors.

"For a declaration of war in the name of the Empire, the consent of the Federal Council shall be required, except in case of an attack upon the territory of the Confederation or its coasts.

"Article 15. The Chancellor of the Empire, who shall be appointed by the Emperor, shall be chairman of the Federal Council, and shall conduct its business. . . .

[11] *Treatment of International Questions by Parliaments, etc.*, British Parliamentary Papers, Miscellaneous, No. 5 (1912), page 21. Evidences of radical changes in the Russian constitutional system soon to take place are furnished by the recent crises and revolutionary overturn.

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"Article 17. The commands and demands of the Emperor shall be issued in the name of the Empire, and require for their validity the signature of the Chancellor, who thereby assumes the responsibility."

It takes no imagination to picture the situation opened up by these provisions and actually in operation. Germany has not a representative system for the conduct of foreign relations. On the other hand, the system is not of a purely executive type, for this implies strictly a minister's sole responsibility to the ruler. As a matter of fact, political scientists have never agreed where the internal exercise of sovereignty resides in the German empire.[12] Many constitutional peculiarities render that problem extremely debatable, but it is certain that the conduct of foreign relations is an attribute of the chancellor and that responsibility respecting such relations is found wherever his authority originates. Now the chancellor is at once the agent of the Bundesrath, which represents states of the empire, and the appointed subordinate of the emperor. The minister for foreign affairs is, in turn, subordinate to the chancellor and is simply his representative. The chancellor is also customarily prime minister of Prussia and Prussian minister for foreign affairs; the emperor is constitutionally king of Prussia, the dominant and principal state of the empire; and the imperial secretary of state for foreign affairs is ex officio a Prussian minister of state. Pursuing the analysis further, it appears that this Prussian body of ministers lacks cohesion as a cabinet and is responsible as individuals only to the king,[13] who is by virtue of office German emperor.

Going in another direction, we find that foreign relations are decentralized in respect to intervention in them by the Bundesrath. It was due to Bismarck that the only federal minister is

[12] A theory not yet put forward so far as I know and worthy of consideration is that the sovereignty of the German Empire resides in the praesidium, which forms the subject of Part IV, Articles 11–19, of the constitution. This theory would place the sovereignty jointly in the president of the confederation and the chancellor.

[13] A. Lawrence Lowell, *Government and Parties in Continental Europe*, I, 288–292.

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the chancellor, "who has subordinates but no colleagues." His plan was to give the Bundesrath general control of imperial affairs, except military and foreign. Though Bismarck did not succeed in having this plan adopted, in form, it really indicates the substantial practice. The Bundesrath constitutionally organizes seven permanent committees from its own members and an additional one, of which Article 8 of the constitution speaks as follows:

"Besides, there shall be appointed in the Federal Council a committee on foreign affairs, over which Bavaria shall preside, to be composed of the plenipotentiaries of the Kingdoms of Bavaria, Saxony, and Wurtemburg, and of two plenipotentiaries of other States of the Empire, who shall be elected annually by the Federal Council."

It will be observed that Prussia does not possess any definite position in this committee, although it is that state in which the actual conduct of foreign relations is vested. Some idea of the importance of the committee can be gained from the fact that for thirty-five years the committee was never convened and that from 1871 to 1908 only two meetings were held. Since the domestic crisis of 1908, Bavaria has established the practice of convening the committee in connection with any question of great magnitude and lasting public interest. It has met regularly during the period of the European war. The proceedings are confidential and unanimity seems to prevail.

Parliamentary procedure scarcely affects the executive's control of foreign relations in practice. Questions may be referred to the budget committee of the Reichstag, which consists of twenty-eight members appointed by leaders of the various parties. Neither this committee nor its subcommittees can send for persons, papers or records, but must ask the president of the Reichstag to do this; but ministers can always make statements to the committee, and regularly do. The committee's reporter makes a verbal report to the Reichstag. Proceedings are secret, but reports of the sittings are issued. Interpellations in the Reichstag are not mandatory on the chancellor and his subordinates. An interpellation must be signed by at least thirty mem-

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bers and when it is reached on the order of the day the president of the Reichstag asks the chancellor "whether and when" he will answer. If the reply is affirmative, the interpellator delivers a speech and a reply is given, with a debate following, if fifty members so desire. No motion on the subject of the interpellation was permissible until 1913. Motions on any subject can, however, be tabled if signed by fifteen members, and votes thereon are taken after debate. Knowledge of the fact that a motion carried has value only as an academic expression of opinion and that neither the chancellor nor his representative will attend or take part in critical debates invariably checks criticism.[14]

It may be ventured that the constitution of the German Empire was not struck off for itself, but rather was drawn up to conform to the constitution of Prussia and to leave Prussia's power intact.[15] Many idiosyncracies in it become logical when that fact is kept in mind. Only two changes affecting the conduct of foreign relations have taken place. One is the occasional functioning of the committee for foreign affairs of the Bundesrath within the last ten or dozen years. Another is an amendment of December 5, 1911, to the colonial law (*Schützgebietgesetz*) of July 25, 1900. The Bundesgebiet, or federal territory, is defined by Article 1 of the constitution, which can be altered only by legislation. The colonies do not form part of the Bundesgebiet and it was consequently found that the Franco-

[14] Details are mostly taken from *Treatment of International Questions by Parliaments*, Parl. Papers, loc. cit.

[15] The constitution of Prussia provides:

Article 43. The person of the king is inviolable.

Article 44. The king's ministers are responsible. All government acts (documentary) of the king require for their validity the approval of a minister, who thereby assumes responsibility for them.

Article 45. The king alone is invested with executive power. He appoints and dismisses ministers. He orders the promulgation of laws, and issues the necessary ordinances for their execution.

Article 48. The king has the right to declare war and make peace, and to conclude other treaties with foreign governments. The latter require for their validity the assent of the chambers in so far as they are commercial treaties or impose burdens on the state, or obligations on its individual subjects.

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German conventions of November 4, 1911, which both ceded and added territory, did not require acceptance by the Reichstag. Dissatisfaction resulted and the government assented to an amendment to the colonial law worded as follows: "An imperial law is required for the acquisition and cession of a protectorate, or part of such. This provision does not apply to the question of the adjustment of frontiers." In practical effect this provision makes an addition to the list of treaty subjects requiring legislation listed in Article 4 of the constitution.[16]

The treaties subject to approval by the Reichstag are more numerous than those in almost any other European state. The provision in this respect is Article 4 of the constitution, concerning which Article 11 stipulates:

"So far as treaties with foreign countries refer to matters which, according to Article 4, belong to the domain of imperial legislation, the consent of the Federal Council shall be required for the ratification, and the approval of the Reichstag shall be necessary to their validity."

Article 4 of the constitution therefore furnishes evidence of legislative control over treaties similar to that already adduced in the case of France. Its provisions, however, will be found to differ considerably from the French stipulation. They read:

"Article 4. The following matters shall be subject to the supervision of the empire and to the legislation thereof:

"1. Regulations respecting freedom of migration, domicile, and the settlement of natives of one state in the territory of another; the rights of citizenship; the issuing and examination of passports and surveillance of foreigners; industrial affairs including insurance business, so far as these matters are not already provided for by Article 3 of this constitution (in Bavaria, however, exclusive of laws relating to domicile and the settlements of natives of one state in the territory of another); and

[16] The colonial law amendment is of particular interest at present because the Reichstag would have to assent to any cession of colonial territory as a result of war. It is interesting to note that Alsace-Lorraine and Heligoland are neither included in the constitutional Bundesgebiet nor within the definition of protectorate.

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likewise matters relating to colonization and emigration to foreign countries.

"2. Legislation concerning custom duties and commerce, and such taxes as are to be applied to the uses of the empire.

"3. Regulation of weights and measures, and the coinage, together with the emission of funded and unfunded paper money.

"4. Banking regulations in general.

"5. Patents for inventions.

"6. The protection of literary property.

"7. The organization of a common protection for German trade in foreign countries, for German navigation, and for the German flag upon the high seas; likewise the organization of a common consular representation of the empire.

"8. Railway matters (subject in Bavaria to the provision of Article 46) and the construction of means of communication by land and water for the purposes of national defense and of general commerce.

"9. Rafting and navigation upon those waterways which are common to several states, and the condition of such waters, as likewise tolls on rivers and other waters; also aids to navigation (lighthouses, buoys, beacons, and other day-marks).[17]

"10. Postal and telegraphic affairs; but in Bavaria and Wurtemburg these shall be subject to the provision of Article 52.

"11. Regulations concerning the mutual execution of judicial decrees in civil matters, and the fulfilment of requisitions in general.

"12. The authentication of public documents.

"13. Common legislation regarding civil rights, criminal law, and judicial procedure.[18]

"14. The imperial army and navy.

"15. The surveillance of the medical and veterinary professions.

[17] The words in parentheses were added by an amendment promulgated in the *Imperial Gazette*, March 3, 1873.

[18] Clause 13 is given as amended on December 20, 1873. The original phraseology was:

"Common legislation regarding the law of obligations, criminal law, commercial law, and the law relating to bills of exchange; likewise judicial proceedings."

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"16. Provisions regarding the press and societies."

The emperor has been somewhat restricted since 1908 as a prime factor in matters of foreign policy. On October 28 of that year a former diplomat published in the London *Daily Telegraph* an authorized conversation with the kaiser. It was a very frank protestation of friendliness toward Great Britain, backed up with what were evidently considered justificatory revelations and an elaborate assertion of Germany's foreign policy. It emphasized the kaiser's goodwill, despite an adverse opinion among some of his subjects. As a calculated indiscretion it created a furore, and at home a peremptory demand that the emperor should recognize that it was his business to be seen rather than heard. Subsequent occurrences were interesting and significant.

The *North German Gazette*[19] published an official statement that the emperor had permitted the publication of the interview without the knowledge of those responsible for the policy of the empire. The manuscript was sent to the chancellor, who referred it to the foreign office with instructions to submit it to the most careful examination. As no objections were raised in the report of the foreign office, the article was published. When the chancellor became acquainted with the article, he informed the emperor that he had not himself read the draft. He considered himself responsible for its publication, and tendered his resignation, which was refused. To Reuter's news agency it was stated that the foreign office had assumed that publication had already been decided on and that all that was required was to confirm the historical accuracy of the facts.

The Reichstag convened on November 4. Interpellations were introduced at the opening session by representatives of the National Liberal, the German Free-thinking People's, the Social Democratic, the Conservative and the Imperial parties.[20]

[19] London *Times*, weekly edition, November 20, 1908, p. 739.

[20] The texts of the interpellations are published in *Verhandlungen des Reichstags*, XII. Legislaturperiode, I. Session. Band 248: *Anlagen zu den Stenographischen Berichten*, Nr. 986 bis 1021.

The wording of the texts so aptly reflects the attitude of the interpellators that I append transcripts of the exact language:

Bassermann, National Liberal, (No. 1003, op. cit., p. 5694): "Ist der Herr

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As each interpellation required 30 signatures, 150 members, or more than a third of the total, went on record as desiring an explanation and reform. Moreover, they represented all sections of the Reichstag. Needless to say, the chancellor assented to make a statement. On November 10 the interpellators and Prince Bülow occupied the session. The chancellor made a critical defense of the emperor's published statement and announced that thereafter the kaiser would not speak without consultation. He used this language:

"The knowledge that the publication of his conversations has not produced the effect which the emperor intended in England, and has evoked deep excitement and painful regret in our own country, will—and this is a firm conviction which I have gained during these days of stress—induce the emperor in future to observe that reserve, even in private conversations, which is equally indispensable in the interest of a uniform policy and for

Reichskanzler bereit für die Veröffentlichung einer Reihe von Gesprächen Seiner Majestät des Kaisers im *Daily Telegraph* und für die in denselben mitgeteilten Tatsachen die verfassungsmässige Verantwortung zu übernehmen?"

Ablass, deutsche freisinnige Volkspartei, (No. 1006, op. cit., p. 5694): "Durch die Veröffentlichung von Aüsserungen des Deutschen Kaisers im *Daily Telegraph* und durch die von Reichskanzler veranlasste Mitteilung des Sachverhalts in der *Norddeutschen Allgemeinen Zeitung* sind Tatsachen bekannt geworden, die schwere Mängel in der Behandlung auswärtiger Angelegenheiten bekunden und geeignet sind, auf die Beziehungen des Deutschen Reichs zu anderen Mächten ungünstig einzuwirken.

"Was gedenkt der Herr Reichskanzler zu tun, um Abhilfe zu schaffen und die ihm durch die Verfassung des Deutschen Reichs zugewiesene Verantwortlichkeit im vollen Umfange zur Geltung zu bringen?"

Albrecht, Sozialdemokrat, (No. 1007, op. cit., p. 5695): "Was gedenkt der Herr Reichskanzler zu tun, um Vorgänge zu verhindern, wie sie durch die Mitteilungen des *Daily Telegraph* über Handlungen und Aüsserungen des Deutschen Kaisers bekannt geworden sind?"

Normann, Konservative, (No. 1011, op. cit., p. 5696): "Ist der Herr Reichskanzler bereit, nähere Auskunft zu geben über die Umstände, die zur Veröffentlichung von Gesprächen Seiner Majestät des Kaisers in der englischen Presse geführt haben?"

Von Hatzfeldt, von Camp-Massaunen, Reichspartei, (No. 1016, op. cit., p. 5701): "Ist der Herr Reichskanzler gewillt, Vorsorge zu treffen, dass sich ähnliche Vorkommnisse, wie sie durch die Veröffentlichung des *Daily Telegraph* zu Tage getreten sind, nicht widerholen?"

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the authority of the crown. Were that not so, neither I nor any successor of mine could assume the responsibility."[21]

A week later the chancellor had an interview with the emperor at Potsdam. The *communiqué* issued concerning it summarized the discussion and added textually:[22]

"His Majesty the emperor accordingly approved the statements of the imperial chancellor in the Reichstag and gave Prince Bülow the assurance of his continued confidence."

Two subsequent motions in the Reichstag aimed at securing the responsibility of the chancellor to the Reichstag. One was introduced by the Social Democrats and the other by the Center party. Neither was successful.

It is obvious from this slight sketch of the executive type of the conduct of foreign relations in the German Empire that many hostages have been given to popular or individual state control.

The present world situation has made the structure of the German Empire a subject of international politics. The autocratic system to the extent that it affects international relations must go, say the United States and the allies pitted against the central powers. The demand to put democracy into the German constitution is having an effect and evidence multiplies that political changes of far-reaching importance are not far in the future. For a year past the legitimate activities of German diplomacy have centered about peace *ballons d'essai*. The government desires peace to clinch the factitious victory of the "war map;" it

[21] The full reports are in *Verhandlungen des Reichstags*, XII. Legislaturperiode, I. Session. Band 233: *Stenographische Berichte*, 153 Sitzung bis 181. Sitzung, 5373–5405. The original of the passage quoted is at page 5396C and reads:

"Die Einsicht, dass die Veröffentlichung dieser Gespräche in England die von Seiner Majestät dem Kaiser gewollte Wirkung nicht hervorgerufen, in unserem Lande aber tiefe Erregung und schmerzliches Bedauern verursacht hat, wird—diese feste Überzeugung habe ich in diesen schweren Tagen gewonnen—Seine Majestät den Kaiser dahin führen, fernerhin auch in Privatgesprächen jene Zurückhaltung zu beobachten die im Interesse einer einheitlichen Politik und für die Autorität der Krone gleich unentbehrlich ist. Wäre dem nicht so, so könnte weder ich noch einer meiner Nachfolger die Verantwortung tragen."

[22] London *Times*, weekly edition, November 20, 1908, p. 739.

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seems that the people desire peace for its own sake or to escape from the increasing pressure of the enemy. At any rate, the Reichstag is a vociferous factor in German politics. And it seems to be making headway in affecting the mechanism of determining policy, for Chancellor Michaelis, speaking in the main committee of the Reichstag late in August, 1917, described the functions of a new Reichstag committee, whose first duties seem to have been discussion with the government of the German reply to the Pope's peace note of August 17, 1917. The chancellor is quoted as saying:

"In order to bring about closer coöperation between the leaders of the empire and the parties he had also other measures in contemplation. He had discussed these questions with the leaders of the Reichstag parties and with members of the Bundesrath who were entitled to vote, and he could confidently rely upon the approval of the allied governments. What was intended was the convening of a free committee to deal with defined, single questions, such as the reply to the papal peace note. In this committee seven members were to be delegated from the five large parties in the Reichstag—that is to say, two each from the Center and Socialist parties, and one each from the Conservative, National Liberal, and the Progressive People's parties. The Bundesrath was also to send seven delegates to the committee, and the imperial chancellor would preside over them. The committee was intended to be completely free, and would, therefore, not be subjected to any order of business, as in the Reichstag. It was not to be considered as representative of the Bundesrath or the government, or of the parties from which its members were sent as delegates, but as a free general body of persons, experts in their respective capacities, who had been called together in order to carry out certain political objects, and enjoying political confidence."[23]

It will be noted that this committee is consultative, extra-parliamentary and divided equally between the Bundesrath

[23] London *Times*, weekly edition, August 31, 1917, page 710. See also article, "German and Prussian Constitutional Reform" by George Saunders, *The New Europe*, Vol. III, 205.

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and Reichstag. The Bundesrath is controlled by Prussia, and the vote of the chancellor would give a majority to that state. It is not surprising, therefore, that the deliberations of the committee apparently failed to affect the text of the German reply of September 22, 1917, to the Pope. But the formation of the committee of itself is a forecast of changes that are impending.

In Great Britain the conduct of foreign relations is vested in the crown, a term which certainly is not synonymous with the king regnant, who nevertheless is the individual exercising the authority inherent in the crown. The crown, acting as the delegate or representative of the nation, enjoys the sole right of making treaties, of declaring peace and war and generally of conducting all foreign relations, but in those respects acts through the recognized constitutional channels upon the advice of the cabinet or the secretary of state for foreign affairs. Members of the cabinet act in the name of the crown, constitutionally considered, rather than as the agent of the king as a person. This distinction brings into operation the rather elaborate system of checks and balances of the British constitution.[24] Thus, though the king is theoretically capable of concluding treaties himself, no treaty is valid without the imprint of the great seal, which is in the custody of the lord chancellor. When William III was determined to conclude the first partition treaty personally and in secret he could not proceed until Lord Somers placed the great seal to blank powers. All treaties since 1700 with that exception have been negotiated by plenipotentiaries of the foreign office, and so have been as responsibly concluded as any acts of the executive cabinet. Maitland,[25] citing the decision in Walker v. Baird, (1892) L. R., A. C., 491, is of the opinion "that a treaty made by the king has in general no legal effect whatever."

In dealing with a monarchical country, however, it is well to bear in mind that the personality of the monarch and the social prerogatives—as distinguished from the constitutional prerog-

[24] See Earl of Halsbury, *Laws of England*, VI, for a complete discussion of the crown.

[25] *Constitutional History of England*, 424.

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atives—at his disposal may play a part in the conduct of governmental affairs. Either, if deftly employed, will give royalty a great influence and may even serve to accomplish purposes not in strict accord with the text of formal laws. Something of this kind may come about from the personal influence of a monarch on the members of a cabinet, who will ordinarily be susceptible to the ideas or the rewards of the sovereign. Not all monarchs are disposed to wield such influence, which in these days is likely to aim at realizing popular aspiratons or at least what royalty conceives to be the country's good.[26]

The cabinet since the reign of William III has been a responsible executive body depending for its tenure upon maintaining a majority in parliament. Its control over treaties is therefore responsible in form, and its practice regarding the negotiation of such instruments has been more and more careful. As an illustration of the practice I quote the words of a lord high chancellor of a period before parliament was firmly fixed as the sovereign power in the state. Speaking of the conclusion of the treaty of Breda, the Earl of Clarendon said in his trial for treason:

"Every dispatch from the ambassadors was read and debated at the council board; and when such difficulties did arise that the ambassadors would not take upon them to make any conclusion . . . . one of themselves . . . . gave his majesty a full account, before the council board, of all that had passed in the treaty. . . . Every particular article was at large debated at the board, which took up many days. . . . To conclude, after a long debate for so many days upon every particular, the king resolved, with the concurrence of the whole board (one or two persons only excepted) to consent to the peace."[27]

Turning to parliamentary action upon treaties, there is in the United Kingdom a practical system that is analogous to that which constitutionally has developed in France. Says an authoritative work:[28]

[26] Compare Lowell's summary in *The Government of England*, I, 40–52.
[27] T. B. Howell, *A Complete Collection of State Trials*, VI, 502–503.
[28] Earl of Halsbury, *The Laws of England*, VI, sec. 679.

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"Treaties thus concluded are in general binding upon the subject without express parliamentary sanction; but the previous consent of, or subsequent ratification by, the legislature is legally necessary to their validity in certain cases.

"Thus, though treaties relating to war and peace, the cession of territory, or concluding alliances with foreign powers are generally conceded to be binding upon the nation without express parliamentary sanction, it is deemed safer to obtain such sanction in the case of an important cession of territory. And where taxation is imposed or a grant from the public funds rendered necessary, or where the existing laws of trade and navigation are affected, or where the private rights of the subject are interfered with by a treaty concluded in time of peace, it is apprehended that the previous or subsequent consent of parliament is in all cases required to render the treaty binding upon the subject and enforceable by officers of the crown. But where the treaty is made to put an end to war, or, possibly, to prevent war, on public grounds and for the public safety, it is doubtful whether the sanction of parliament would be always required. In all cases, however, the courts are competent to inquire into matters involving the construction of treaties and other acts of state; and the plea of an act of state, or that the matter involves the construction of treaties, affords no valid defense to an action against officers of the crown for interference with the private rights of a British subject."

Respecting the conduct of foreign relations in general, and particularly in determining policy and reaching diplomatic decisions, the crown is likely to intervene. The foreign secretary is "primarily responsible to the crown and to parliament for formulating and conducting the foreign policy of the country."[29] However the law may be respecting parliament and policy, the crown is substantially supreme regarding the conduct of foreign relations. In the Earl of Danby's case the first article of the impeachment charged him with having "traitorously encroached to himself regal power by treating in matters of

[29] Earl of Halsbury, op. cit., VII, 86.

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peace and war with foreign ministers and ambassadors, and giving instructions to his majesty's ambassadors abroad, without communicating the same to the secretaries of state and the rest of his majesty's council, against the express declaration of his majesty and his parliament."[30] Queen Victoria and, in his lifetime, her prince consort took a keen interest in external relations, frequently for the best. Edward VII himself participated in diplomatic affairs. In 1850 the queen's desires respecting diplomatic decisions were definitely stated in the following note to her prime minister, Lord John Russell:

"The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to a measure, that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity toward the crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and the foreign ministers before important decisions are taken, based upon that intercourse; to receive the foreign dispatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off."[31]

The very next year the point came to trial. After the *coup d'état* of December 2, 1851, by which Louis Napoleon seized the reigns of government at Paris, the British cabinet decided "that nothing should be done by her ambassador at Paris which could wear the appearance of an interference of any kind in the internal affairs of France." Lord Palmerston, the foreign secretary, however, expressed to M. Walewski, the French ambassador, his "entire approbation of the act of the president, and that he could not have done otherwise than he had done." Lord John Russell, as prime minister, asked for explanations.

The question at issue was whether the secretary of state was

[30] Howell, op. cit., XI, 621–624.

[31] Hansard's *Parliamentary Debates*, Third Series, Vol. CXIX, 90.

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entitled, on his own authority, to write a dispatch as the organ of the queen's government, in which his colleagues of the cabinet had never concurred, and to which the queen had never given her royal sanction. It was decided in the negative by requiring Lord Palmerston to give up the seals of the foreign office, after a lengthy review of the facts in parliament by Lord John Russell the premier, on February 3, 1852.[32]

The incident reveals the solidarity of the cabinet as the executive of the government in the name of the crown. The usual practice was stated by Lord John Russell speaking in parliament on June 21, 1871: "According to the uniform practice of the foreign office, the dispatches which I wrote were submitted to him [Lord Palmerston] as prime minister; frequently he would write the whole dispatch over again, and I was always ready to accept his draft."[33] That this is the current practice is shown by a remark of Sir Edward Grey in a speech at North Sunderland, January 20, 1912:

"A considerable amount of fault has been found with what some people think is and what they call my foreign policy, but which, of course, ought not to be called my foreign policy because it is quite impossible for any individual foreign minister to carry out a policy which is not also, in its main lines, the policy of the cabinet of which he is a member."[34]

Parliamentary intervention in foreign affairs occurs on the occasion of the foreign office vote and through interpellations, which during Sir Edward Grey's tenure of office were answered personally by him two days a week and at other times by an under secretary. The foreign office vote has usually not resulted in a very keen or statesmanlike debate. Sir Edward Grey, speaking in parliament, apparently assigned the reason when he said:[35]

[32] Hansard's *Parliamentary Debates*, Third Series, Vol. CXIX, 92–103.

[33] Hansard's *Parliamentary Debates*, Third Series, Vol. CCVI, 1833; cf. Vol. CXIX, 105.

[34] London *Times*, weekly edition, January 26, 1912, page 71.

[35] *Parliamentary Debates*, Fifth series, Vol. XXIV, 540.

The house of lords is on record as refusing to demand full reports of foreign affairs. A motion of the Marquess of Normanby to this effect was made on April 23, 1860, and was negatived. The motion read:

"That while this house fully recognizes the necessity of a private correspond-

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"The real reason for lack of control, whether with regard to foreign policy or general policy or any great imperial matter, is the congestion of business in the house of commons.

". . . As long as the house of commons remains without some great measure of devolution, its business will be so congested that, with the best will in the world, they would never be able to acquire that control of imperial policy which it can only acquire by frequent debates on important subjects."

It may be mentioned in proof that in the period 1801–10 foreign relations occupied 26.75 per cent of the commons debates, whereas in the period 1881–90 they occupied but 11.75 per cent of the time.[36] Clearly any reform must be accomplished in parliament.

Recent criticism has harped on the same strings and has reverted to Henry Richard's motion of March 19, 1886, which was then lost by four votes and which read:

"That in the opinion of this house, it is not just or expedient to embark in war, contract engagements involving grave responsibilities for the nation, and add territories to the empire without the knowledge and consent of parliament."[37]

Of this motion it may be said that it progresses in a circle. No cabinet can embark in war without a vote of funds from parliament, and it is therefore certain that no cabinet will fail

ence between the secretary of state and her majesty's representatives abroad, it is of opinion that all facts of international importance ought to be made matter of official correspondence, and as such to remain on record for the use not only of the government of the day but of their successors in office, to be produced to or withheld from parliament by the ministers of the crown on their own responsibility:

"That the absence of any such record, more especially if such private correspondence is referred to in public dispatches, is injurious to the public service, unjust alike to the foreign minister who made the communication and to official colleagues at home, and calculated to withhold important matter from the full and free control of parliament." (Hansard's *Parliamentary Debates*, Third Series, Vol. CLVII, 2112; vote, ibid., 2140.)

[36] Thomas Alfred Spalding, *Federation and Empire*, 79. (London: H. Henry and Company, 1896.)

[37] Hansard's *Parliamentary Debates*, Third Series Vol. CCCIII, 1386–1421. The motion was lost 108 to 104.

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to feel full responsibility for action tending toward war. In the debate on the motion Mr. Gladstone as prime minister asserted:

"I am not sure that any instance could be quoted in which the queen has engaged in war in any technical sense without the consent of parliament."[38]

The statement is probably extravagant in the unqualified terms which the prime minister chose to use, but to one sort of war, a kind obsolete in these days of national conflicts, it certainly does apply, because Section III of the Act of Settlement adds a definite constitutional restriction:

"That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England without the consent of parliament."[39]

As to contracting engagements without the knowledge and consent of parliament, there is no lightheartedness concerning them as is commonly charged. If as a minister of the crown, he should forget his responsibilitiy, the chief of the foreign office should turn back to the articles of impeachment in 1667 against Edward Earl of Clarendon, which state:[40]

"XVI. That he hath deluded his majesty and the nation, in all foreign treaties and negotiations relating to the late war."

Lord Derby, then Lord Stanley and foreign minister, speaking in 1867 in reply to a complaint that parliament could only discuss a treaty while the country was pledged by its obligations, said: "All I can say is, that is the constitution under which we live; the power of making treaties is vested in the executive upon their responsibility. If I may judge from my own feelings, so far from trying to strain that responsibility, a minister will always desire to be supported by the knowledge that the opinion of the house is in his favor.[41]

[38] Hansard's *Parliamentary Debates*, Third Series, Vol. CCCIII, 1404.
[39] 12 & 13 Will. III, c. 2, 1701.
[40] T. B. Howell, *A Complete Collection of State Trials*, VI, 397.
[41] Hansard's *Parliamentary Debates*, Third Series, Vol. CLXXXVII, 1916.

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The addition of territories to the empire[42] without the knowledge or consent of parliament raises an exceedingly complicated question as to the relations of the crown and the numerous types of nonsovereign portions of the empire. "As a general rule," says Sir Henry Jenkyns,[43] "the British dominions cannot be added to or diminished without the consent of the crown. . . . As in most other constitutional questions, the modern tendency is to consider that the crown could not do so important an act (as surrendering British territory) without the consent of parliament.[44] Where an imperial (parliamentary) act has expressly defined the boundaries of a colony or has bestowed a constitution on a colony within certain boundaries, territory cannot be annexed to that colony so as to be completely fused with it . . . . . without statutory authority; because (a) any such annexation would be altering an act of parliament; and (b) colonial legislation cannot operate beyond the colony, and therefore cannot extend to the new territory until it is by some means made part of the colony. But the king, unless restrained by an imperial act, can give to any such colony . . . . . the administration and government of any territory. . . . The same law appears to apply where the boundaries . . . . . of a colony are altered by diminution. . . . Irregular annexations have been validated by parliament.[45] In 1895 a general act (58 & 59 Vict. c. 34) was passed enabling the crown, by order in council or letters patent, to alter the boundaries of any colony, but this power was limited in the case of the self-governing colonies by requiring the consent of the colony."

It is therefore true that the foreign office, in negotiating alterations of territory, acts usually on the initiative and as the agent of the nonsovereign entity concerned. "This is a power," said Mr.

[42] The question of foreign office alteration of the territory of the British Isles proper has never arisen.

[43] *British Rule and Jurisdiction Beyond the Seas*, 2–4.

[44] Sir Henry, who as Parliamentary counsel from 1869 to 1899 was the official draftsman of legislation, here cites the debates on the cession of Heligoland and the Anglo-German Agreement Act, 1890 (53 & 54 Vict., c. 20) as a precedent.

[45] See Jenkyns' note for citations of acts respecting New South Wales, Victoria and Canada.

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Gladstone, "which, in the abstract, is greater than it is in practice. . . . The difficulty arises in consequence of the political considerations which have grown, not out of the mere act of annexation . . . . but on account of the liberty which has been assumed by the executive government in political and warlike proceedings antecedent to the annexation."[46]

It can be seen from what has been said that Great Britain, while possessing ostensibly an executive form of the conduct of foreign relations, in reality has a form of such conduct that is responsible indirectly but actually to the legislative body. The difficulty encountered in examining the British method of government lies in the fact that it has grown from practical conditions and has never been made as a whole to conform to political scientific theory of any kind. The process is seen for our purpose in the development of the cabinet, now in practice depending as respects tenure upon a parliamentary majority, from the privy council, which was and in theory still is a body of executive councillors chosen at will by the crown.

In Great Britain, as elsewhere, it is quite as likely that trained foreign-office workers will act according to the real sentiment and interests of the country as would legislators, untrained as a class in foreign relations. Mr. Gladstone, as prime minister at the time of the Richard motion, cited an instance:

"The case of the lorch *Arrow* in connection with the difficulty in China in 1857 . . . . was a case in which it would have been perfectly possible for the executive government, if they had been so minded, to communicate the proceedings to the House; but they did not think it necessary to do so. . . .

"They might have disowned it, but they did not. The late Lord Derby had the strongest feeling upon the subject. He raised the question in the house of lords and moved a vote of censure; but the house of lords supported the government. The question was raised here, and I took a strong part with persons of various political shades of opinion, and we beat the government. But what happened? When we went to our con-

[46] Hansard's *Parliamentary Debates*, Third Series, Vol. CCCIII, 1402.

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stituents a good many of us lost our seats, and the country determined to support the government."[47]

At present no policy of far-reaching consequence is likely to be adopted without the knowledge and implied consent of the house of commons. Responding to President Taft's proposal of unlimited arbitration, Sir Edward Grey in a speech before the house on March 13, 1911, said:

"When agreement of that kind, so sweeping as it is, is proposed to us, we shall be delighted to have such a proposal. But I should feel it was something so momentous and far-reaching in its possible consequence that it would require, not only the signature of both governments, but the deliberate and decided sanction of parliament, and that, I believe, would be obtained."

The treaty project when prepared was laid before parliament, but it was not in terms a proposal for unlimited arbitration. It was a combination of technical devices for the pacific settlement of all disputes. That parliament accepted the proposal in principle need not be doubted in view of the numerous questions and speeches concerning it, though no vote was taken. The question of ratification never arose because, owing to restrictions put upon the treaty text by the United States senate, the President did not push his policy to completion.

The declaration of war in 1914 was another instance of a similar character. Statements by both the secretary of state for foreign affairs and the prime minister were made to parliament before the act, and these were notably accurate, as a textual

[47] Hansard's *Parliamentary Debates*, Third Series, Vol. CCCIII, 1406. The debate in the House of Commons occurred February 26–March 3, 1857 (op. cit., Vol. CXLIV, 1391–1485, 1495–1585, 1589–1694 and 1726–1850) and resulted in a vote of 263 ayes and 247 noes on this motion:

"That this House has heard with concern of the conflicts which have occurred between the British and Chinese authorities in the Canton river; and, without expressing an opinion as to the extent to which the Government of China may have afforded this country cause of complaint respecting the nonfulfilment of the treaty of 1842, this House considers that the papers which have been laid upon the table fail to establish satisfactory grounds for the violent measures resorted to at Canton in the late affair of the *Arrow*."

The debate in the Lords occurred February 24–26, 1857 (op. cit., 1155–1245 and 1310–1388) and resulted in a negative vote.

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comparison with the entire set of diplomatic documents published subsequently will indicate. Sir Edward Grey closed by saying: "If . . . . we are forced . . . . to take our stand upon those issues, then I believe, when the country realizes what is at stake, what the real issues are . . . . we shall be supported throughout, not only by the house of commons, but by the determination, the resolution, the courage and the endurance of the whole country." No opposition was voiced. The leader of the party out of power, Bonar Law, assured the government that "they can rely on the unhesitating support of the opposition." The Irish leader reiterated the same sentiment. Many speakers voiced hopes that the government would not push toward war and would find a way to maintain peace, but these members all seemed to agree with one of their number, Ramsay Macdonald, who referred to "a house which in a great majority is with him [Sir Edward Grey]." And the essence of parliamentary government is that a majority takes decisions and gives mandates. The next day (August 4), the prime minister announced the circumstances and the fact of the ultimatum, again without opposition.[48]

It is interesting to recall that the prime minister had forecasted such an attitude. On March 24, 1913, in reply to questions by Sir William Byles and Joseph King in parliament, Mr. Asquith said: "There are no unpublished agreements which will restrict or hamper the freedom of the government or of parliament to decide whether or not Great Britain should participate in a war. The use that would be made of the naval and military forces if the government and parliament decided to take part in a war is, for obvious reasons, not a matter about which public statements can be made beforehand."[49]

Evidence to the same general purport as that here adduced might be cited *ad libitum*. The fact is that Great Britain has

[48] *Parliamentary Debates*, Fifth Series, Vol. LXV. The discussion on August 3 is in columns 1827–1853; on August 4, 1925–7; on August 5, 1963–4.

[49] *Parliamentary Debates*, Fifth Series, Vol. L, 1317; *cf.* Mr. Gladstone's statement in 1886, above. The premier's words above, it will be noted, do not refer to "understandings."

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a government which as to its forms centers about the crown, but as to all its practice centers about the house of commons. "Whoever should today study legal texts only," says James Bryce,[50] "might conclude that the crown and the house of lords are just as important members of the composite sovereign as is the house of commons." It is fair to conclude that, by the ordinary processes of legislation, the house of commons can at present make any changes in the conduct of foreign relations that it desires.

THE AMERICAN TYPE

The American type of handling foreign relations may be illustrated by the practice of the United States, which at least has been the inspiration of the type throughout the majority of the states of the world. It is that type which fundamentally makes the legislative branch of the government part of the treaty-making power and recognizes a right on its part to be informed and even to direct action on foreign relations.

So far as I am aware, this type first came into use in the United States, where it was an outgrowth of conditions rather than of a definitely thought-out plan. When the Declaration of Independence of July 4, 1776, cancelled the control of British officials in the colonies, they were confronted by the problem of setting up a government to fight the war that was already upon them. The immediate thing was to coöperate in war, and the continental congress proceeded to act. It began work under almost the same conditions that a modern diplomatic conference would sit if its members had a right to vote always with representative authority. It was both the executive and legislative power in the state. The continental congress, as the only body with power, soon found it necessary to handle foreign affairs, for the American Revolution, like all wars, was won quite as much by diplomacy as by the sword.

The first continental congress had met at Philadelphia on September 5, 1774, adopting soon after a loyal address to the

[50] *Studies in History and Jurisprudence*, 553.

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king of England asking him to recall oppressive measures. This address was sent to certain "friends of American liberty" in England who were instructed to act for the "United Colonies." Three out of the seven addressed did so, and thus the first diplomatic act of the democracy was one initiated by legislative representatives. The effort failed and events headed toward rebellion. On November 29, 1775, a committee of secret correspondence was appointed by the second continental congress "for the sole purpose of corresponding with our friends in Great Britain, Ireland and other parts of the world, and that they lay their correspondence before Congress when directed."[51] Benjamin Franklin was its chairman. After the Declaration of Independence its secret character was less necessary and on April 17, 1777, it was succeeded by the committee for foreign affairs, created by the congress. The Articles of Confederation continued the arrangement, which proved unsatisfactory. A plan for a department of foreign affairs was reported to the congress in January, 1781, and on August 10, 1781, such a department was organized without the right of taking independent action. Robert R. Livingston, the first head of the department, was not an executive officer, but rather a clerk for congress. He was not intrusted with the initiation of diplomatic matters, did not send papers of importance before submitting them to congress, submitted to it all correspondence from abroad, and simply executed resolutions of the congress directing the foreign policy. The congress even held frequent interviews with the minister of France and more or less committed the confederation.

The system was apparently a legislative, but really an executive, control of foreign relations.[52] It is therefore significant that it failed. It was never perfect, for the mission in France was invested with almost unlimited power by the congress.[53] In

[51] Francis Wharton, *Revolutionary Diplomatic Correspondence of the United States*, II, 61.

[52] Similar organization has frequently appeared when a nascent state has developed only its sovereign assembly.

[53] See additional instructions to Benjamin Franklin, Silas Deane and Arthur Lee, commissioners from the United States of America to the king of France. Wharton, op. cit., II, 172.

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fact, it might be said that the congress as a legislature made of its executive secretary for foreign affairs a mere clerk and placed few limits on the power of its diplomatic officers.[54] There was throughout the period a rivalry of ideas between those who held for observance of the rules of international law and those who desired to disregard them. Yet "no matter how much congress might arrogate to itself supreme power, executive authority grew up as coördinate with legislative. The first form in which this executive authority asserted itself was in that of our legation at Paris."[55]

"Nor did this growth of executive coördinateness exhibit itself exclusively in foreign relations. It was so in finance, over which, after the incapacity of committees for financial work had been demonstrated by many disasters, Morris was granted a control which each day became more and more closely assimilated to that exercised by the executive department of the government at the present day. It was so in military affairs, in which Washington gradually assumed the position which the executive now exercises in such affairs. Thus it was that even congress itself, which had at first been the sole organ of government, accepted, under force of circumstances, the establishment, in response to Washington's appeal of January 29, 1781, of executives or ministers in the departments of finances, war, the marine, and foreign affairs. The Constitution of the United States did not make this distribution of power. It would be more proper to say that this distribution of power made the Constitution of the United States."[56]

The Constitution, which inaugurated a federal system, took form under the influence of this preceding practice and of the philosophical arguments for the separation of powers of Montesquieu and Blackstone. Legislative intervention in the conclusion of treaties resulted from the detailed character of the government, that is, its federal character. By Article 6 of the

[54] On the whole subject of government of foreign affairs by committees of congress see Wharton, op. cit., Introduction, secs. 15, 103, 104, 180, 209.

[55] Wharton, op. cit., I, 251.

[56] Wharton, op. cit., I, 662–3.

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Articles of Confederation, the states had been by implication prohibited from conducting foreign relations "with any king, prince or state" or between themselves without the consent of the congress; while by Article 9, paragraph 1, foreign relations were placed within the sole and exclusive right of congress, subject to the assent of nine of the thirteen states. The fundamental problem was to combine a number of sovereign states into a workable system, and to accomplish this result in the face of a pronounced particularism in the states. The tenth amendment, declared in force December 15, 1791, states the principle which presided over the birth of the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited to it by the states, are reserved to the states respectively, or to the people." No consideration seems to have been given to foreign relations other than treaties in the federal convention. Pinckney's plan contemplated that "the Senate shall have the sole and exclusive power to declare war and to make treaties and to appoint ambassadors and other ministers to foreign nations, and judges of the Supreme Court."[57] Hamilton's, on the other hand, provided:

"Article III, 8. The senate shall exclusively possess the power of declaring war. No treaty shall be made without their advice and consent. . . ."[58]

In an earlier draft was this provision:

"The authorities and functions of the Executive to be as follows: . . . . to have, with the advice and approbation of the senate, the power of making all treaties."[59]

These ideas were embodied into Article II, section 2, second paragraph, of the Constitution, which reads: "He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls."

[57] Farrand, *Records of the Federal Convention*, III, 599.
[58] Farrand, op. cit., III, 622.
[59] Farrand, op. cit., I, 292.

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No other reference to the conduct of foreign relations is to be found in the Constitution. An act of July 27, 1789, created a department of foreign affairs, which was renamed the department of state by act of September 15, 1789. Its functions included correspondence with and instructions to diplomatic and consular agents abroad and negotiations with the agents of foreign nations in the United States, "or to such other matters respecting foreign affairs as the President of the United States shall assign to the said department."[60]

The American type of the conduct of foreign relations, therefore, centers the business in the executive, with the exception of all treaties. The explanation is that treaties are, by the Constitution, laws, and that the state itself is a federation. The President and two-thirds of the senators present, therefore, exercise a legislative power in passing a treaty to be the law of the land, while the senate alone is selected to perform this function because they thus make treaties binding upon the several states, whose representatives are their two senators each. A suspicion that the executive might be capable of acquiring undue power lay behind the division of the treaty-making power.[61] It is somewhat remarkable that the suspicion did not extend to the elaboration of foreign policy; but calling for papers, the power of impeachment and the reservation to congress of the right to declare war seemed, and were, safeguards in that respect.

The American system, owing to the success of the United States, has been widely copied. It is logical only in a federal

[60] The law shows internal evidence of being largely based on a persistent project in the constitutional convention to provide for a cabinet in the fundamental document. The project as given in the journal of August 20, 1787, reads:

"To assist the President in conducting the Public affairs there shall be a Council of State composed of the following Officers:

"4. The Secretary of foreign affairs who shall be appointed by the President during pleasure. It shall be his duty to correspond with all foreign ministers, prepare plans of Treaties, and consider such as may be transmitted from abroad —and generally to attend to the Interests of the United States, in their connections with foreign Powers." (Farrand, op. cit., II, 335–6.)

[61] The attitude of the constitutional convention toward the executive is illustrated by the definition of Mr. Wilson (Farrand, op. cit., I, 70): "An executive ought to possess the powers of secrecy, vigor and dispatch—and to be so constituted as to be responsible."

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state and therefore only in Switzerland, Mexico, Venezuela, Colombia, Brazil and Argentina. Elsewhere its adoption has been due either to imitation or to the developing idea of legislative as the sole democratic control. In Latin America, and necessarily in the case of unicameral legislatures, approval of treaties is usually by the congress as a whole.

This American type of the conduct of foreign relations operates with no more perfection than the others, but it has several distinctive features not present in the others. For instance, it abolishes secret treaties;[62] but it encourages hair-splitting on the technical definition of a treaty within the meaning of the constitution, and results in executive engagements through exchanges of notes and other subterfuges. States possessing it publish their annual diplomatic correspondence as a whole, barring those parts affecting or reflecting on the interests of third states not parties to the negotiations. In the legislative department of the government there is usually a restricted committee the members of which are more fully informed than their colleagues; and the legislative department as a whole comes to depend on their judgment, voting their recommendations as a rule. The function of the legislature tends to become perfunctory and the attitude of the committee tends to coincide with that of the executive.

[62] True only if the executive and legislative departments do not themselves agree to preserve secrecy.

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CONSPECTUS OF THE CONDUCT OF FOREIGN RELATIONS

[This conspectus is experimental only, but is believed to be accurate so far as details are given. It is primarily based upon "Treatment of International Questions by Parliaments in European countries, the United States and Japan," *British Parliamentary Papers*, Miscellaneous No. 5 (1912), Cd. 6102. Information concerning other states has been added from very diverse sources. Omitted from consideration are: China, Liberia, Luxemburg, Montenegro, Persia and Siam.]

	MINISTER REPORTS ON FOREIGN AFFAIRS TO:	FOREIGN AFFAIRS IN PARLIAMENT	PARLIAMENTARY ACTION ON TREATIES	PUBLICATIONS
Argentine Republic	Congress		Required by congress	Annual report; casual diplomatic books; Boletin del ministerio
Austria-Hungary (Staatsgrundgesetz, December 21, 1867)	Delegations on budget vote, with special committees			Casual diplomatic books
Belgium	Chambers, at will	Committee reports	Required for commerce, financial obligations, territorial; bills including; no change	Casual diplomatic books
Bolivia	Congress		Required by congress	Annual reports
Brazil	President; for congress		Required by congress	Annual reports; casual diplomatic books
Bulgaria	Discussed in debate on king's speech	Committee reports	Bills including	Casual diplomatic books
Chile	Congress		Required by congress	Annual reports; Boletin del ministerio (monthly)
Colombia	Congress		Required by congress; by advice of ministers and council of state if congress not in session	Biennial reports; Boletin del ministerio
Costa Rica	Congress		Required by congress	Annual reports

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CONSPECTUS OF THE CONDUCT OF FOREIGN RELATIONS—Continued

	MINISTER REPORTS ON FOREIGN AFFAIRS TO:	FOREIGN AFFAIRS IN PARLIAMENT	PARLIAMENTARY ACTION ON TREATIES	PUBLICATIONS
Cuba	President on request for congress, at discretion.		Required by senate; treaties of peace required by congress	Annual reports; Boletin oficial
Denmark (Constitution, July 28, 1866.)	Riksdag at will; Folketing in committee	Secret session in committee of whole (little used)	Required for cession, constitutional modification, obligating citizens, financial obligations	Casual diplomatic books
Dominican Republic	Required to congress on request; and to president		Required by congress	Annual reports; additional reports.
Ecuador	Congress annually; by request, at discretion		Required by congress	Annual reports
France	Commission des affaires extérieures et coloniales, at discretion	Communicated after ratification	Required for peace, commerce, persons and property of citizens, financial obligations, territorial	Annual report by budget committee of deputies; casual diplomatic books
German Empire	Budget committee confidentially; responsible to chancellor; he to emperor	Federal council assents to conclusion on matters in Art. 4 of constitution. Reichstag sanctions.	Interpellation; sanctions on subjects listed in Art. 4, of constitution	Casual diplomatic books
Great Britain	House of commons at foreign office vote; interpellations	Communicated at discretion	Where legislation is required, before ratification	Numerous papers on specific questions.
Greece	Interpellations few, at discretion			Casual, for very special occasions.

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Guatemala	Assembly		Required by legislative power (assembly)	Annual reports; official gazette
Haiti	Interpellations; secret session at discretion		Required by national assembly (joint session)	Annual reports
Honduras	Congress		Required by congress	Annual reports
Italy	Interpellation; foreign office vote debate; at discretion	Communicated at discretion	Required for financial obligations	Casual diplomatic books
Japan	Interpellations; discretionary			Casual diplomatic books
Mexican States, United	President for congress		Required by senate	Annual reports; department bulletin; government daily newspaper
Netherlands	Parliament annually; interpellations; question day	Communicated at discretion	Required for territorial, financial obligations; altering legal rights.	Annual ministerial report
Nicaragua	President, for assembly; interpellations at discretion		Required by assembly	Annual reports
Norway	Council of state; its minutes to Storthing	Communicated to Storthing, if secret	Discussion of foreign affairs	
Panama	National assembly		Required by national assembly	Biennial reports
Paraguay	Congress		Required by congress	Annual reports
Peru	Congress interpellations		Required by congress	Annual reports
Portugal (Constitution, August 21, 1911).	Committee on foreign and international affairs		Required by congress	Annual reports; casual papers
Rumania	Interpellations; explanatory sessions at discretion		Required by parliament	Casual diplomatic books

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CONSPECTUS OF THE CONDUCT OF FOREIGN RELATIONS—Continued

	MINISTER REPORTS ON FOREIGN AFFAIRS TO:	FOREIGN AFFAIRS IN PARLIAMENT	PARLIAMENTARY ACTION ON TREATIES	PUBLICATIONS
Russia	Duma, only by command of tzar			Casual diplomatic books
Salvador	President; for assembly		Required by assembly	Annual reports; Boletin del ministerio (monthly)
Servia	Interpellations, without debate	Discussion at secret sessions		Casual diplomatic books
Spain	Interpellations, subject to vote	Vote on policy debate		Casual diplomatic books
Sweden	Constitution committee on motion; interpellations	Debates; special committees	Required for financial obligations or territorial	Casual diplomatic books
Switzerland	Federal council	Special committees of each chamber	Required by federal assembly	Annual report to federal assembly
Turkey	Standing committee (*anjuman*) of chamber; interpellations	Must be submitted to committee	Legislative sanction required	Casual diplomatic books
United States of America	Annual *Foreign Relations* publication	Executive session of senate	Advice and consent of senate	Annual diplomatic book; papers to congress and its committees
Uruguay	Chambers	Advice by senate to initiation on peace, friendship, alliance, and commerce	Required by general assembly	Annual reports; Boletin del ministerio
Venezuela	Congress		Required by congress	Annual report; casual diplomatic books

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OUR BUNGLING ELECTORAL SYSTEM

JOSEPH CADY ALLEN

According to popular parlance, we elect a President and vice-president, on the Tuesday following the first Monday of November of each fourth year, by vote of the people. It is well known however that, technically speaking, we do not choose these officers on that day or at any time by popular suffrage. Instead of that, we choose in each state a committee that is called the electoral college; and these electors meet on the second Monday of January and elect the President and vice-president by ballot. The theory of the Constitution[1] is that these electors are not to be pledged or obligated to vote for any particular person, but that they and not the people shall really make the choice.

But, practically from the start, and contrary to the expectation of those who framed the Constitution, the choice of President and vice-president was seized by state legislatures and afterwards transferred to the people, through the device of appointing electors that were virtually pledged to designated candidates. So the electoral colleges have failed of their purpose and become a useless complication. And not only are they useless, but objectionable also and dangerous in many and serious ways.

This paper will endeavor to show that our present system of presidential election is bad in every step of the process, viz. in *a.* the appointment of the electors, *b.* the membership and proceedings of the electoral colleges, *c.* the count of the vote in congress, *d.* the interval between the election and the time when the President takes office, and *e.* the election by the house of representatives in case the electors fail to give a majority vote to any candidate. It will furthermore endeavor to show

[1] Constitution, Art. II. 1[1-3]; Am. XII.

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f. some evils resulting from the system as a whole, and particularly from the form it has taken because of the twelfth amendment. Under each of these headings a number of specific faults will be indicated. And finally, another plan of presidential election will be outlined, and proposed for adoption in place of the system we now have.

DEFECTS OF THE PRESENT SYSTEM

Appointment of the Electors

The Constitution does not direct how the electors are to be chosen, but expressly empowers the legislature of each state to determine how they shall be, to use its own expression, "appointed."[2] This word is not a democratic term, and does not suggest a popular election. Commenting on this provision, a congressman once said, very aptly, that a state legislature may vest the appointment of electors in "a board of bank directors, a turnpike corporation, or a synagogue." As a matter of fact, the legislatures of the different states chose either to appoint the electors by their own votes, or to have them chosen by the people. In the first two elections, choice was made by the legislatures in a majority of the states. But gradually this method was supplanted by that of popular voting. By 1832, only South Carolina chose electors by the legislature; but that state persisted in the practice until the time of the Civil War. From that time onward, electors have been chosen by the people in all the states.

In this popular choice, all the electors of a state may be chosen on one ticket, or each district may elect one member of the electoral college. The choice by districts has, however, to be somewhat modified by the fact that each state appoints two more electors than it has congressmen in the national house of representatives, and these two have to be chosen in some other manner. Notwithstanding this qualification, the district system was tried by a number of states in the early years, but was

[2] Constitution, Art. II, 1[2].

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gradually supplanted by the method of a general ticket. In 1828 electors were chosen by the people on the general-ticket system in eighteen states, on the district-system in two, and in two others by a compromise between these rival methods. Some of the eighteen states had tried for many years to secure the district-system by an amendment to the federal Constitution. And this suggests one of the reasons why the general-ticket system has prevailed over the other method. If some states employ it, those without it are at a disadvantage politically, and so for their own interest are compelled to adopt it. If, for example, Massachusetts, which is Republican in politics, should have the district system, the vote of her eighteen electors would be divided, six of them—let us suppose—being of the Democratic party. But if Missouri should at the same time use the general-ticket system, and by this means choose none but Democrats for her eighteen electors, then Massachusetts Republicans would be outvoted two to one by the solid vote of Missouri combined with that of her own Democrats. So if Missouri has the general-ticket system, Massachusetts must have it, and similarly Missouri is compelled to have it if Massachusetts uses it; and so it is with all the states. The general ticket-system cannot be abolished except by constitutional amendment.

Another and perhaps more fundamental explanation for the general-ticket system is the ambition of the majority party in each state to increase its voting strength. By the general ticket, the whole vote of the state is in effect cast for the majority party. Occasionally it may happen however, that the minority party may get temporary control of the legislature and pass a law to establish the district system. This for example was done by the Democratic party in Michigan in 1892. But such a reversion to the district system is rare and always temporary; for when the normally dominant party regains control of the legislature the law is repealed, or if the party that enacted it becomes dominant it is for the same reason repealed. So the general ticket is kept in the states because it gives an immense political advantage to whichever party is dominant in each of them. Here appears, then, the first of the evils connected with our electoral system.

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1. The general-ticket system is unjust to the minority in the state. That minority, which in some cases is nearly equal to the majority, is not simply in effect disfranchised by being denied representation in the electoral college, but even compelled in this way to be counted as voting on the other side. In Indiana in 1916, the plurality for Hughes was 0.9 per cent of the total vote for all candidates, and was less than one-third the vote for Benson, the Socialist candidate, and less then one-half that for Hanly, the Prohibition candidate. But all the fifteen electoral votes of Indiana were cast for Hughes, as if the Democrats, the Socialists, and the Prohibitionists were all for him. In New Hampshire at the same time the plurality for Wilson was only 56 votes, which was 0.06 per cent. But this gave the four electoral votes to Wilson, as if every citizen in that state were for him. In New York in the same year, if the electors had been chosen according to the popular vote, Benson would have had one representative in the electoral college, while in Pennsylvania, by the same rule, Benson would have had one elector and Hanly another. But in New York and Pennsylvania these Socialist and Prohibition voters were compelled by the general-ticket system to be counted in the electoral vote for Hughes. And in every close state nearly half the voters were compelled to be counted for a candidate to whom they were opposed. But the injustice does not stop there; it extends to the nation as a whole.

2. The same system sometimes defeats the popular will by rejecting the candidate that had polled the highest popular vote and electing another in his stead. This has happened twice within the last fifty years. The first time was in 1877, when Hayes was elected in spite of Tilden's plurality; and the second in 1889, when Harrison was elected notwithstanding the fact that Cleveland was slightly in the lead in the popular vote.

3. The general ticket increases sectionalism, and gives undue political ascendency to groups of large states. Sectionalism is increased by it, because all minor parties in a state are ignored. The "solid south" would show far less solidarity if it were not for the general ticket. Many of the southern states poll a Republican vote of substantial size. For example, in 1916,

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the Republican vote was about 39 per cent in Missouri, 43 per cent in North Carolina and in Tennessee, and 46 per cent in Virginia and in Kentucky. Congress has had numerous Republican representatives from the South; and the same districts that sent these men to Washington would be likely to choose Republican electors, were it not for the general ticket.

This effect of an artificial sectional solidarity combines also at times with the inordinate power of groups of large states. The very large states of themselves have excessive power through the general ticket, and by combination this power may become fairly overwhelming. It is theoretically possible for thirteen of our larger states to elect a candidate to whom the other thirty-five should be opposed. Indeed there are twelve states that together have an electoral vote lacking but three for a majority. But fortunately some of these are in the south, and others in the north, so that they are not likely to combine their forces. Passing however into probabilities, we find that Massachusetts, New York, New Jersey, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota, and Iowa—eleven contiguous and politically harmonious large states—have a combined electoral vote of 236, which is only 30 short of a majority. If we combine also with these the five other New England states and West Virginia, these seventeen will have a majority of the electoral votes. And this combination is a natural one. These states form an unbroken area of our territory, and have a similar climate, similar economic and racial conditions, similar interests, and similar political views. Most of them are Republican in political preference, several being what is called "doubtful," but hardly any of them strongly inclined to the Democratic party. On other than partisan issues also they are inclined to be in agreement. They are as a rule conservative in their attitude toward social and political problems. These states are then inclined to think and vote alike, and so, in presidential elections, they may decide the issue. There would be no injustice in this, if their vote expressed the sentiment of nearly all their people, for they contain a little more than half our total population. But their vote never does stand for anything like a unanimous

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sentiment. Sometimes nearly 49 per cent of New York, the largest state, may be on the other side. So if these seventeen states vote alike, it does not necessarily show a majority opinion in the nation. But through the general ticket this solid block of north-central and north-eastern states forms a section that tends to become a sort of Prussia dominating the rest of our federal union. Since Lincoln's day every President but one has come from this section. The exception is Andrew Johnson, and his case is of no importance, as he was not elected to that office. Furthermore, every presidential candidate of the two leading parties, has been chosen out of this section. It is of course not of much importance whether our Presidents come from the north, the south, the east, or the west; but when the leading parties always choose their candidates from one section, it shows that the favor of that section must be secured in order to win an election. This overweening influence is obtained through the general-ticket system, by which the states obtain a false solidarity. And their political power is enhanced also because among them are several "doubtful" states whose vote may turn the election. And this brings us to another evil.

4. The general-ticket system gives an excessive strategic importance to some of the "doubtful" states, and by this means fosters "machine-politics" and corruption. The "doubtful" states are made such by the general ticket. Without it, they would not be "doubtful" but divided in their politics. In these states the voters of the two leading parties are in nearly equal proportions, so that often it is uncertain to which side the electoral vote may go. A large "doubtful" state may decide the result of the election, and sometimes by a very small margin of popular votes. The election of 1916 was decided by a plurality for Wilson in California of less than four thousand, or 0.4 per cent of the popular vote of the state. On the other hand, the plurality for Hughes in Indiana was about seven thousand, or 0.9 per cent; and in Minnesota it was—to quote the exact figure—merely 396, or 0.1 per cent. If 3500 of the votes for Hughes in Indiana had been cast instead for Wilson, or if only 199 of the Hughes votes in Minnesota had been for

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Wilson, he could have won the election even without the help of California. Each of these three "doubtful" states was accordingly pivotal in the election of 1916.

But New York, on account of its immense electoral vote, and because it is nearly equally divided politically, is more frequently than any other the pivotal state. In 1844, by a margin of merely 1.1 per cent of its popular vote, it turned the election from Clay to Polk. In 1884, New York gave Cleveland the insignificant plurality of a little more than one thousand, or 0.1 per cent of the vote of the State. This secured for him the State's entire electoral vote, which was nearly 9 per cent of that of the whole nation. If 575 of these Cleveland votes had been cast instead for the Republican candidate, Blaine would have been elected. But in 1888 New York turned against Cleveland by a plurality of between fourteen and fifteen thousand. So through losing to Harrison the 36 votes of the New York electoral college, he lost the election itself, notwithstanding that he had a plurality in the entire nation of nearly a hundred thousand. A state that is at once so fickle and so powerful has enormous influence in the nation's politics; and the great extent of this influence is due to the general-ticket system. Moreover this system has fostered a class of political leaders that are in the business of manipulating elections, and has encouraged bribery and other forms of corruption. It would hardly pay to buy votes, or to resort to fraudulent practices, if there were no strategic points where the transfer of a few votes might turn the election. But by purchasing merely 575 votes in New York State in 1884, the Republicans might have secured the election for Blaine

5. Another fault of a different sort inheres in the general-ticket system in its liability, now and then, to fail of its purpose to give a solid vote of the state.

Sometimes the vote of a state, through errors or whims of the voters, causes a divided electoral college. Some voters may have a dislike of one or more of the electoral candidates of their party, or a partiality for one or more of those proposed by the other party. And others may make a mistake in marking the ticket. In Maryland, in 1904, more than 2500 Republican

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voters placed their mark after the name of the first electoral candidate in their party's list, instead of putting it in the square above. In consequence of this error the state, which should have chosen eight Republican electors, chose only one Republican and seven Democratic. Similar errors with similar results have been made in other states.

This completes the list of evils growing out of the general-ticket system. But there is yet another evil connected with the choice of electors.

6. The apportionment of electors gives unduly large representation to small states. The electors for each state are "equal to the whole number of senators and representatives" to which it is entitled in congress.[3] The number of representatives in congress is apportioned according to the population, except that no state, however small, is to be denied representation by one member.[4] Each state is entitled, then, to two more electors than would be its proportion on the basis of population alone. To a large state, this addition would be only a slight relative increase. But to a state having merely enough inhabitants to equal the apportionment for a member of congress, the addition of these two extra electors trebles the proportion of its electoral vote to its population; and if the inhabitants are still fewer, the state still has its three electors and the proportion is consequently further increased. Pennsylvania has nearly thirty-eight times the population of its neighboring State Delaware. But Delaware has 3 electoral votes and Pennsylvania only 38. Consequently a citizen's vote in Delaware counts for three times as much as that of his neighbor across the state line. In New Mexico it counts for nearly twice as much as in Texas; in Wyoming for three times as much as in Nebraska; and in Arizona for eight and in Nevada for nine times as much as in California.

[3] Constitution, Art. II, 1^2.
[4] Constitution, Art. I, 2^3; Am. XIV, 2.

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The Electoral Colleges

To the six evils already enumerated, three must be added relating to the next step in our electoral system after the electors have been chosen.

7. An elector may defeat the intention of those who choose him by voting for another candidate than the one for whom they expect him to vote. More than half a thousand electors are chosen. Citizens, as a rule, do not care who these electors are, and seldom even read their names; for they think that the office is a perfunctory one. If, for any reason, there are vacancies in the electoral college of a state, the members, when they convene, choose others to make up the number. Now if any of these numerous electors so carelessly chosen should, for corrupt reasons, or on some whimsical or fanatical principle, betray their trust, their votes and not the intentions of the citizens would count.

8. A person chosen for elector may prove to be technically ineligible. The Constitution stipulates that no elector shall be a "person holding an office of trust or profit under the United States."[5] This restriction might be useful if the elector were a free agent, as it was intended he should be. But since his office has become perfunctory, this technical qualification may at times work mischief. Sometimes there may be a question whether a person is disqualified by this provision, and the decision may be made by the governor on partisan grounds. If a person chosen for elector should be ruled ineligible before the college convenes, his place would be forfeited to a rival of the other party and the vote of the state divided. If this disqualification were not discovered until later, his vote would become invalid. Through a dispute on this question of qualification, the entire electoral vote of the state may be put in question. In Oregon in 1876, three Republican electors were chosen. But the governor, a Democrat, adjudged one of these ineligible, and gave a certificate to the candidate having the highest number of votes on the Democratic ticket. All three Republicans that

[5] Constitution, Art. II, 1[2].

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were chosen met however by themselves and cast their ballots for Hayes and Wheeler. But the Democrat that had received the governor's certificate appointed two others to fill the "vacancies," and these three voted for Tilden and Hendricks. This shows the mischievous possibilities in the technical disqualification of electors.

9. A state might perhaps be disfranchised through failure of the electors to meet on the day that was appointed. The Constitution requires that the day on which the electors meet shall be "the same throughout the United States."[6] In the year 1856, the electors of Wisconsin were prevented by a heavy fall of snow from gathering on the day that was appointed, and so their vote was cast at a later date. As the result of that particular election would be the same in either case, it was not officially decided whether the vote of these electors was valid or not; but if such a delay should occur again, the vote of the state would be put in jeopardy, and the election itself might depend on the outcome.

The Count in Congress

When the perils of the electoral colleges are past, two others are met in the counting of the vote by congress.

10. The entire electoral vote of a state may become invalid through a technical error in the returns. Such a thing happened to Arkansas in the year 1873. The certificate of the electors' votes did not bear the great seal of the state, because at that time Arkansas did not have one; but in its place the seal of the secretary of state was used. For this irregularity the vote was rejected by congress.

11. There is no constitutional provision for deciding disputed elections. This amazing omission brought us, in 1877, almost into another civil war. Since 1887 we have had a law for the settlement of such disputes. Fortunately we have not yet needed to invoke it. It leaves, in certain contingencies, the settlement of dispute as to the vote of a state to concurrent

[6] Constitution, Art. II, 1[4].

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action of the two houses of congress, or in case they do not agree, to the governor of the state concerned. This makes it possible in such cases that the vote may be made a foot-ball of politics. But, be the law good or bad, this is a matter that should be provided for by a rigid constitutional provision, rather than by a statute which might be suddenly changed in the interest of one or another party.

Interval between Election and Taking of Office

Between the November election and the inauguration in March is a long interval, and many things are liable to occur in it. Our electoral system adds in several ways to its faults by failing to provide for the contingencies of this time.

12. The new administration should come more quickly into office. It is unfair alike to the new President and to the old, that an interval of four months should elapse before the change of government is made. The retiring administration can do nothing in a constructive way in this interval, and so only routine business can be conducted. It would be peculiarly unfortunate to have some crisis, or even strained relations, in our intercourse with foreign nations, during the intervening time. We should, in the interest of good government and of responsibility and safety in our foreign relations, have a much shorter period between the election and the inauguration. But to have this, we must first of all abolish the electoral colleges, for they are the main cause of the long interval.

13. There is no satisfactory provision, in case the candidate that was chosen for President in November should die before the electors meet. Technically, and according to the intention of the Constitution, there is no President-elect until the electors have chosen him. Now in case the person for whom they were expected to vote should die, they would have to vote for some other person in his stead. This would put upon them a heavy responsibility, for which they would be in every way unfitted. We do not choose these electors to select a President for us, but for the merely perfunctory office of giving legal and binding form to our choice. Furthermore, they do not meet as one

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body, but "in their respective states,"[7] and so have no opportunity to consult and come to an agreement. But the electors of the successful party must of necessity vote as a unit for some person, or the other party will steal the election from them. There is then, only one feasible method by which they may agree on a substitute; and that is, to consult the national committee of their party. It is likely then, in such a contingency, that this national committee would virtually appoint the President. Instead of a President chosen by the people, we should have one that was selected by a small group of politicians and placed in office arbitrarily by them to serve their ends.

14. Provision is not made for succession, in case both the President-elect and the vice-president-elect should die after the electoral colleges have adjourned, but before the fourth of March. The twelfth amendment provides by implication that, if the President-elect die, the vice-president-elect shall succeed him. But no provision is made for the case of the vice-president-elect also dying. Senator Lodge says concerning this contingency, "Some way out of the grave situation thus created would no doubt be found, but it would have to be extra-constitutional and through an assumption of power by congress."[8]

Election by the House of Representatives

In case there is not a majority of the electoral vote for one candidate, it is required that the President be chosen by the house of representatives, from the three that had led the others in that vote.[9] As it is exceptional for our Presidents to have received a majority in the popular vote, it would seem to be unnecessary that they should have it in that of the electoral colleges. An election by the house of representatives has occurred twice in our history, and might be made necessary again through a contest in which there should be three or more leading candidates, each particularly strong in one section. And the possibility of such an election contributes three more evils to our electoral system.

[7] Constitution, Art. II, 1[3]; Am. XII.
[8] *Scribner's Magazine*, vol. 35, p. 543.
[9] Constitution, Am. XII.

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15. In an election by the house of representatvies, each state, whether large or small, has an equal vote. The constitutional provision is, that "the votes shall be taken by states, the representation from each state having one vote."[10] This means, for example, that the vote of Nevada would be equal to that of New York, and the vote of New Mexico to that of Texas. It means subversion of government by the people to government by artificial and altogether unequal political units. This rule is a mischievous survival of the old and extreme state-sovereignty doctrine. It would give, in case we should have the unfortunate occasion to use it, extraordinary and dangerous power to a number of new states, sparsely settled, and at that often with a half-nomadic and largely alien population.

16. The election by the house might be blocked if one or two states should not vote. "A majority of all the states"—not simply of those that vote—is "necessary for a choice."[11] The election then may be prevented, provided there is a close vote, by the refusal of one or two states to cast any ballot; and in this way the leading candidate is prevented from securing "a majority of all the states." A state might indeed in good faith be prevented from voting, because of its representation being so divided as to have no majority for any candidate. Or on the other hand, it might intentionally refrain from voting, in order to prevent an election, or to extort concessions from the other states.

17. In an election by the house of representatives, it is not the new house but the old that chooses. It is in fact almost on the eve of its dissolution, that this body elects the new President with whom it is to have no dealings. And it may be also, that the house that chooses the President is dominated by a party or a set of ideas that was repudiated at the preceding general election.

All these three evils were exemplified in the election by the house of representatives in the year 1801. The twelfth amendment had not been adopted at that time. But that amend-

[10] Constitution, Am. XII.
[11] Constitution, Am. XII.

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ment affects chiefly the proceedings in the electoral colleges, leaving those in the house of representatives nearly the same as before.

This election was the sequel to a political overturn by which the Federalists were routed and the Republicans brought into power. Following the original rule of the Constitution,[12] each member of an electoral college had cast his ballot for two persons, without designating which of them was desired for President and which for vice-president. According to this rule, whoever should receive the largest number of votes was in that way elected President, and the person that should receive the next number would be elected vice-president. But in this case Jefferson, the candidate of the Republicans for President, and Burr, their candidate for vice-president, while leading the others, each received the same number of votes.

This brought the election into the house of representatives; and there the Federalists attempted to do as much as they could to thwart the will of their opponents. One of their plans was to elect Burr instead of Jefferson to the Presidency. Another was, to keep some of their states from voting, and so block the election. In both they were unsuccessful in the end. But the house balloted thirty-five times fruitlessly, the result at each count being eight states for Jefferson, six for Burr, and two not voting. If however the vote had been by members instead of by states, Jefferson would have had a majority on the first ballot. Or on the other hand, if a majority of the states voting, but not of all the states, were required, Jefferson would in that case likewise have been elected on the first ballot. But as it was, the deadlock continued to the thirty-sixth ballot, when most of the Federalists refrained from voting and Jefferson was accordingly elected.

The Twelfth Amendment

To avoid repetition of such scandalous and dangerous proceedings as those of the house election of 1801, the twelfth

[12] Constitution, Art. II, 1[3].

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amendment was adopted three years later, on the eve of the next Presidential election. By this, instead of voting for two persons without distinction, the electors are directed to name one for President and another for vice-president. This of course deprives the house of representatives of any power to make the presidential and vice-presidential candidates exchange places. But, as was proved in 1824, it does not take away the possibility of an election by that body; nor does it remove the three dangers that have been pointed out as pertaining to such an election. The twelfth amendment requires a majority of the electoral votes for a choice by the electoral colleges. If a plurality were sufficient, there would be very little danger of their failing at any time to make a choice. The twelfth amendment is faulty then, because it requires a majority. But, more than this, it is illogical, because it does not go to the root of the evil, which is the interposition of the electoral colleges between the popular voting and the legal choice of the President. The electoral colleges had become meaningless, because the electors were pledged. Either the position of responsibility contemplated by the Constitution should, if possible, have been secured for them, or their office should have been abolished. But because neither of these things was done, the evils that have been enumerated have been fostered in our electoral system. And finally, three other evils have developed, which are due to the system as a whole, rather than to any step in the process.

18. The vice-presidential office has been degraded, through the twelfth amendment. Even without that amendment, it would have been difficult enough to keep this office in the dignified standing it should possess. The Constitution commits in the first place the great error of giving the vice-president what is virtually a sinecure; for a man of such ability and public spirit as to make him suitable for succession to the Presidency dislikes to be elected to a four year's term of idleness. But the original rule for the votes of the electors[13] was designed to support the dignity of the vice-presidential office, by bringing into it the

[13] Constitution, Art. II, 1[3].

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defeated candidate for the Presidency. This procedure, however, would maintain the awkward situation of a President and a vice-president of opposed parties. For partisan reasons, if not for patriotic ones, the political managers of each side would endeavor so to influence the election as to obtain by it, if possible, a vice-president as well as President of their own party. It would be arranged that one or two of their electors should not vote for the second nominee of their party. In this way he would fall a little behind his running-mate; and if the latter should be elected President, the former would probably come second in the voting, and so be the choice for vice-president. This would, however, bring an element of uncertainty into the voting of the electors, at least for the second name on their ballot. They could not be so rigidly pledged as has become the custom, and it is uncertain how safely and wholesomely such a procedure would work. It might possibly have worked better, so far as the vice-presidential office is concerned, but it could not, in this respect, work worse than the rule that we now have. It is notorious that the parties seldom nominate vice-presidential candidates of recognized competency for succession to the Presidency. And the citizens, when they vote, are powerless to correct this fault. They cannot vote for President, without also voting for the vice-presidential nominee of the same party. And so we are doomed, through the twelfth amendment, to have, with a few fortunate exceptions, vice-presidents that are not competent for succession to the chief magistracy of our nation.

19. The system as a whole necessitates elaborate party machinery. The twelfth amendment has strengthened this necessity by depriving the electors of any occasion for exercising their individual judgment in the voting. The parties have to nominate not only a presidential and a vice-presidential candidate, but more than five hundred men besides for electors. And they must attend to innumerable details of this absurdly complicated system. So there must perforce be an elaborately organized and well-paid party machine. And that such an organization is to a large extent extra-legal gives it a sinister influence in our political life.

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20. Our electoral system discourages minor parties and gives the two main ones permanence and a virtual monopoly. Since party organization is elaborate and expensive, it must needs be permanent. So when old issues are outworn, the party finds new ones, not from honest conviction but in order to maintain itself. On the other hand, new parties have not the experience, nor have minor ones the capital, to work efficiently; and so it is as a rule more feasible to work through one or the other of the two great organizations. The general-ticket system also discourages every minor party, because it cannot win a single electoral vote unless it captures a whole state. The citizen, too, is likely to feel that his vote is thrown away if he casts it for the candidate of one of these smaller movements. Or it may be that such votes may turn the electoral vote of the state from one to the other of the main parties. Even the election itself has been determined three times —in 1844, 1848, and 1884—by the vote of a minor party in New York State. In the last of these instances the Prohibition vote, mostly withdrawn from the Republican party, gave the Democratic ticket a plurality less than twelve hundred. This turned the 36 electoral votes of the state to Cleveland, and so made him, instead of Blaine, President. Such results may make it seem treacherous for a man to vote a minor ticket, and for this reason the minor parties poll a much smaller vote than would naturally be theirs. The citizen is, then, not allowed to choose his issues—except so far as he may do this within a party through its primaries—but must accept and vote upon those issues which the two great organizations choose to set before him.

These twenty evils make our electoral system unsuitable, injurious, and perilous, to popular government. Why then do we tolerate it? Partly because custom has blinded us to its evils and perils. Partly also, because we have had the notion that the Constitution cannot be amended without a civil war. And again, because of a reverence for the old Constitution and those who framed it. And yet again, because we have doubted whether any new system could be adopted that would be satisfactory.

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The first of these reasons is answered in the twenty charges that have here been made against the present system. The second has in recent years been answered through the sixteenth and seventeenth amendments. As for the third reason—reverence for the Constitution and its authors—that should not hinder but rather hasten us to make the change. For, in the first place, we have already departed from the plan of the Constitution through the twelfth amendment. But this amendment was a makeshift, and should give place to a more logical and permanent measure. And, in the second place, from the start we violated the spirit of the Constitution and purpose of its framers, by pledging the electors. The fathers of the Constitution failed utterly in their intention to keep the choice of the President away from the people; and respect for them, as well as a desire to strengthen the charter that they bequeathed to us, should lead us to expunge the record of their failure.

The fourth reason will be treated in the second part of this paper, through proposals there outlined for a new system.

PROPOSED REMEDIES

The defects in our present electoral system are too numerous and too deep-seated to be remedied except by a radical change. The twelfth amendment should warn us against enacting any new makeshift of constitutional reform. We should either restore to the electors some measure at least of the independence and responsible authority that the fathers of the Constitution intended to give them, or else abolish the office and resort to some form of direct popular election. But to name this dilemma is to solve it. All our tendencies are now toward direct popular action in government, and away from the representative principle. These tendencies may need in some instances to be resisted, but we cannot think of adopting any new scheme that is directly opposed to them. Whatever power we might give to the electors must be taken away from the people, and to take any jot of power from the people is politically unthinkable. Our course then is clear as to this point. We cannot mend the electors' office, and so we must end it.

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The most obvious plan for a direct election, and one that seems at first sight fair and simple, is to determine the choice by adding up the popular vote in all the states for each candidate. This however in reality would not be fair, and if it were made fair, it would not be simple. The voting is not under national but under state control; and the various states have by no means equal franchise laws. In some states the women have the suffrage, and the vote is vastly increased for that reason. In other states the vote is much reduced by restrictions upon negro suffrage. And there are also unequal requirements as to education and other matters. As long as these differences obtain, the plan of deciding the election by a direct addition of the votes in all the states would be grossly unfair. To make it fair, we should have to have a national suffrage law for presidential elections, and should have also to place these elections, and the registration for them, under national control. But, as our election of congressmen, which takes place at the same time, would remain under state control, the voter would have to be registered twice, and to submit to different tests, and perhaps to vote in two different places, if he would exercise his full suffrage. And besides these complications, many of our states would be strongly opposed to any interference with their own suffrage laws, and hence the requisite amendment could not be adopted.

Another plan would be to let each congressional district have one presidential vote, which should go for the candidate that had received a plurality there. This plan however, while less unfair than our present system, would be far from a just expression of majority rule. In 1824 Maryland, which then chose its electors by the district system, gave 43.7 per cent of her popular vote for Adams, and 43.3 for Jackson. But notwithstanding that Adams was thus slightly in the lead of Jackson in the popular vote, his electoral vote was only 3, while Jackson's was 7.

And thirdly, there may be an apportionment plan, by which each state would be considered as having a certain number of presidential votes, to be distributed among the candidates in proportion to the popular vote for each. By adding up the

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presidential votes of all the states for each candidate, the choice would be determined. J. B. Dougherty[14] proposed a plan in which the vote of the state should be equal to the members it would have, according to the present system, in its electoral college. But that would perpetuate the injustice of permitting certain states with very small populations to give an electoral vote of from three to eight times as great as it should be by a just apportionment. A more equitable apportionment plan would be such as will be here outlined as the first item of suggestions for a new system of presidential election.

The Apportionment Vote

Let each state be accorded what we may call an apportionment vote for President; and let the extent of this vote be proportional to the state's relative population. A convenient standard would be the number of a state's representatives in congress. But as the apportionment vote would have to be divided among different candidates, it should be larger than the number of congressmen. Three times that number is suggested, as perhaps as suitable a figure, all things considered, as any.

This apportionment vote of the state would of course be divided among the candidates according to the relative size of the popular vote for each; and the vote of the nation would be determined by adding the apportionment votes for the various candidates.

A state's apportionment vote would of course not divide exactly into whole numbers for the candidates. The fraction then, if it should be more than half, should be counted for one, but otherwise it should not be counted. Thus if a candidate should have 10.51 votes, it would count him as 11. If a minor candidate should have more than half an apportionment vote, it would count him as 1; but if he should not obtain more than one-half, he would have no apportionment vote in that state.

On account of these fractions, the total vote of the state would sometimes be more or less than the number apportioned to it. This apportionment should be considered, then, as a basis for the division of the vote, but not as rigidly fixing the total. The gain or loss of one vote to a state would be shared by several candidates, so that none would be seriously affected by it.

[14] *The Electoral System of the U. S.* (Putman, N. Y., 1906), pp. 364 ff.

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How this system would work, and particularly in a close or much divided election when it would be put to a severe test, is shown in detail in the table, in which this apportionment plan is applied to the elections of 1860, 1876, 1884, 1888, and 1916.

It appears from this table,[15] that this plan reverses the result of the elections of 1876 and 1888. In this however it is in accord with the popular vote, which gave pluralities to Tilden and Cleveland. Furthermore, it will be seen that the apportionment vote for every candidate in each of these years is substantially in accord with the popular vote for him. This shows that the plan works fairly to all. The inaccuracies due to the fractions in distributing the vote in each state are slight, and tend to equalize one another in the various states. The apportionment vote then, is a fair and reliable indication of the relative number of people that desire one or another candidate to be elected. Any President that should be chosen through a plurality of apportionment votes, might be confidently regarded as the choice of the people for the office.

In the table the names of some minor candidates appear, with apportionment votes for them, in some of the states. Except in 1860, these minor candidates, as the table shows, received no electors' votes. The apportionment vote, it appears then, does not suppress the minor parties, as the present system does. Nevertheless a minor candidate may receive so few popular votes that no state will give him even one in its apportionment. There were candidates of this character in the years treated in the table; but, since they did not win any apportionment votes, they do not appear in the lists. In no case however did any one of these have as much as one per cent of the popular vote. The apportionment vote then, is not only fair to the two leading candidates, but does substantial justice to all.

[15] *Explanation of signs in table.* −Indicates the total vote for the state is one less than the apportionment.

+Indicates the total vote is one more than the apportionment.

A number in black type indicates the electors' votes were given to that candidate.

A number dotted beneath indicates the electors' votes were divided between that and another candidate.

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TABLE OF APPORTIONMENT VOTES

(Three times as many votes to a state as it has representatives in congress)

	1860				1876			1884				1888				1916			
	Lincoln (R.)	Douglas (D.)	Breckinridge	Bell (C. U.)	Tilden (D.)	Hayes (R.)	Cooper (Gbk.)	Cleveland (D.)	Blaine (R.)	Butler (Gbk.)	St. John (Pro.)	Cleveland (D.)	Harrison (R.)	St. John (Pro.)	Streeter (Labor)	Wilson (D.)	Hughes (R.)	Benson (Soc.)	Hanly (Pro.)
Alabama		−3	**−11**	−6	**14**	10		**15**	9			**16**	8			**23**	7		
Arizona																**2**	1		
Arkansas		1	**3**	2	**7**	5		**9**	6			**9**	6			**14**	6	1	
Calfornia	**2**	2	2		**6**	6		−8	**−9**			−8	**−9**			**−15**	−15	−1	−1
Colorado					Leg	isla	ture	1	**2**			1	**2**			**7**	5		
Connecticut	**−7**	−2	−2		**6**	6		**6**	6			**6**	6			−7	**−7**		
Delaware	1		**1**	1	**2**	1		**2**	1			**2**	1			1	**2**		
Florida			**2**	1	3	**3**		**3**	3			**4**	2			**+9**	+2	+1	+1
Georgia		+3	**+12**	+10	**19**	8		**20**	10			**−21**	−8			**33**	3		
Idaho																**−3**	−2		
Illinois	**14**	13			+27	**+29**	+2	28	**30**	1	1	28	**30**	2		35	**43**	2	1
Indiana	**19**	14			**19**	19	1	**19**	19	1		19	**19**	1		18	**19**	1	1
Iowa	**3**	3			10	**16**	1	16	**17**			15	**17**		1	14	**18**	1	
Kansas					+3	**+6**	+1	−7	**−12**	−1		7	**12**		2	**12**	11	1	
Kentucky		5	11	**14**	**−18**	−11		**−18**	−14			**18**	15			**−17**	−15		
Louisiana		2	**5**	5	9	**9**		**10**	8			**13**	5			**22**	2		
Maine	**12**	5	1		6	**9**		5	**7**			5	**7**			6	**6**		
Maryland		−1	**−8**	−8	**10**	8		**−9**	−8			**9**	9			**−9**	−8		
Massachusetts	**21**	7	1	4	14	**19**		**15**	17	3	1	16	**19**	1		−22	**−24**	−1	
Michigan	**7**	5			12	**14**	1	**−15**	−16		−1	16	**16**	1		−17	**−20**	−1	
Minnesota	**4**	2			4	**5**		**6**	9			6	**8**	1		**+14**	**+14**	+2	+1

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Mississippi		1	9	5	12	6		13	8			15	6			−22	−1		
Missouri	−2	−7	−4	−7	23	16		−22	−19			−21	−19		−1	24	23	1	
Montana																−3	−2		
Nebraska					1	2		4	5			4	5			−10	−7		
Nevada					1	2		1	2			1	2			2	1		
New Hampshire	5	4			4	5		3	3			3	3			3	3		
New Jersey	7	8			11	10		−10	−10			10	10	1		15	20	1	
New Mexico																−1	−1		
New York	53	46			51	48		−49	−49	−1	−2	−49	−50	−2		−57	−66	−3	−2
North Carolina		1	12	11	13	11		14	13			14	13			17	13		
North Dakota																−4	−4		
Ohio	32	27	2	2	−29	−30		30	32		1	30	31	2		−34	−29	−2	
Oklahoma																12	8	4	
Oregon	1	1	1		1	2		1	2			1	2			−4	−4		
Pennsylvania	42	3	28	2	39	41	1	37	44	2	1	38	44	2		43	59	4	2
Rhode Island	4	2			2	4		−2	−3			3	3			4	5		
South Carolina	(Legislature)				7	8		16	5			17	4			20	1		
South Dakota																−4	−4		
Tennessee		−2	−13	−14	18	12		−15	−14			16	14			17	13		
Texas			5	1	13	5		−23	−9			22	8	3		42	9	3	
Utah																4	2		
Vermont	−7	−1			3	6		2	4			2	4			2	4		
Virginia		−4	−17	−17	16	11		15	15			15	15			20	10		
Washington																7	7	1	
West Virginia					5	4		6	6			6	6			9	9		
Wisconsin	5	4			12	12		12	14		1	12	13	1	1	14	16	2	1
Wyoming																2	1		
Total apportionment vote	248	179	150	110	450	419	7	487	460	9	8	498	451	17	5	696	552	33	10
Popular vote, per cent	39.9	29.4	18.1	12.5	50.9	47.9	0.9	49.1	48.5	1.3	1.5	48.7	47.8	2.2	1.2	49.2	46.1	3.1	1.1
Electors' vote	180	12	72	39	184	185		219	182			168	233			277	254		

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Counting the Votes

The present system requires that the electors' votes should be counted in congress. But as this involves the settlement of disputes as to votes, it would be better to take the counting out of the hands of a partisan body such as congress necessarily is. The counting of the votes is essentially a judicial act. It should be lodged then in a judicial body, or in some commission under judicial supervision. The count of the apportionment votes, then, should be under the direction of the supreme court of the United States; and the justices might if necessary appoint an electoral commission, but should themselves finally decide and announce the result of the vote.

Election by the House

Our present system requires that, if no candidate receive a majority of electors' votes, the retiring house of representatives shall elect the President. Our history shows it to be unreasonable to expect majority votes by a fair and natural method of counting. The majorities for our Presidents have usually been obtained artificially by the general-ticket system. Save in the first half-century of government by our Constitution, it has been quite the exception for the successful candidate to receive a majority of the popular vote. Their failure, however, to receive half the votes that were cast, was due to the minor candidates in the field, each of whom represented but a small fraction of the popular will. It is not significant that a few groups of men with ideas at variance with the main body of public opinion should reduce the leading candidate's vote to something less than a majority. But it is desirable that his plurality should be a substantial one. For otherwise, as voting is at best an inaccurate expression of the popular will, we cannot be sure that we have elected the President that the people most want. We might reasonably require that the leading candidate, in order to be elected, must have one per cent more votes than his nearest rival. If he fails to attain that much plurality, it would be doubtful whether he really would be the choice of the larger number of citizens.

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In the case, then, that no candidate receives a plurality of one per cent on the total apportionment vote, it would be well to let the members-elect of the future house of representatives choose the President from among the two leading candidates, or from more than two if there be others having a vote within one per cent of the highest. This house of representatives will have to work with the President, and so in the interest of harmony it would be well for it to choose, when the people's choice is not clear and decisive. The members-elect then should, upon notification, convene as an electoral college. They should vote as individuals, and not as states. A majority of the votes cast—not of the members—should be necessary to a choice.

The Vice-President, and the Presidential Succession

The office of vice-president is superfluous in our government, and should be abolished. Congress should provide for the presidential succession, as it now does in case of the death or disability of both President and vice-president. There has seldom been a time in our history, when the people would not rather see the secretary of state than the vice-president succeed to the Presidency. So it would be in the interest of good and safe government, to have the office of vice-president abolished. It would also be much to the interest of the voter to have but one candidate to choose instead of two.

In case the President-elect should die, the outgoing President should remain in office until a special election could be held. Congress should in this case immediately provide for a special presidential election. If it should be unable to do so before its term expires, the new congress should be immediately called by the President in special session for this purpose.

Election and Inauguration

The interval between election and inauguration should be very much shortened. Enough time should intervene to enable the vote under ordinary circumstances to be counted, and perhaps a week more for the members-elect of the new house to

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meet if necessary as an electoral college. If the count should not be completed before the date of inauguration, or if the electoral college should be in session and not have made a choice, the outgoing President should remain in office until his successor is determined.

These five proposals are not so mutually necessary that they stand or fall together. Neither are they of equal importance. The plan for an apportionment vote is most important. But as this would not remedy all the evils in our present method of election, it seems better, in proposing a change, to outline a new system in its entirety. For it is a new system that we need—not merely a change in some part but a reconstruction throughout. Nothing less than that will suffice. What we now have is, to modify a well-known phrase, a thing "of shreds and patches" and beyond further mending. It should also be beyond our further endurance; for it is a constant injury and menace to our democratic institutions.

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LEGISLATIVE NOTES AND REVIEWS

The Illinois Legislature of 1917. The 50th general assembly of Illinois met on January 3 and adjourned on June 29, 1917. In both houses the Republicans were in a majority and the work of organization was agreed upon before the houses met. The promptness of organization was in striking contrast with conditions in 1913 and 1915, when weeks were consumed before the house of representatives was able to elect a speaker. In 1913 delay in the organization of the house of representatives was due in large part to the fact that no one party had a majority, but in 1915 with the Republicans in a majority, the "wet" and "dry" issue was stronger than political lines.

With prompt organization the general assembly was in a position to act effectively and its record of important legislation is the best in any session of recent years. The first important enactment in point of time and the most important single enactment of the session is the civil administrative code which became a law on March 7, and whose terms became effective July 1, 1917.

The civil administrative code substantially reorganizes the administrative machinery of the state. The measure was based upon an investigation made by an efficiency and economy committee created by the 48th general assembly in 1913. This committee under the chairmanship of Senator Walter I. Manny, selected Prof. John A. Fairlie of the University of Illinois as director and prepared a careful and comprehensive report upon all of the state's administrative activities. This report was submitted to the general assembly in 1915 together with drafts of bills, but the bills were presented somewhat late in the session and received little consideration. Governor Frank O. Lowden made his campaign for the Republican nomination and for election largely upon the issue of a state administrative reorganization. Upon his election in November, 1916, he at once began tentative drafts of a measure which would bring about this reorganization, and when the legislature met early in January, 1917, a tentative measure was already in form for consideration. Separate committees were constituted in both the house and senate for the consideration of the proposed administrative consolidation; a bill was agreed upon by the house com-

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mittee, was passed, and with some amendments enacted by the senate. Upon the report of a conference committee, a bill known as the "Civil Administrative Code" was enacted, and this bill received the governor's approval on March 7.

This code consolidates into nine departments fifty or more functions and departments previously independent of each other. The consolidation is by no means complete, and many of the state functions remain independent of any one of the newly organized departments, but Illinois through this measure has accomplished the most thoroughgoing administrative reorganization that has yet been achieved in any state. The code has left as it stands the whole tax situation, and Illinois is very badly in need of a small central tax commission, but it seemed necessary that this wait, inasmuch as to attempt an administrative reorganization and a reorganization of the tax system at the same time might well have caused the failure of both.

Under the new code the state government is divided into nine principal departments: finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, trade and commerce, registration and education. At the head of each is a director who in general has complete supervision over its work. Several boards independent of the directors are continued, such as the public utilities commission, and an industrial commission for the administration of the workmen's compensation act. A number of other boards or commissions are provided, but in general the boards other than the ones specified above are advisory in character, the final authority for action resting in the director. For the five normal schools a different plan was necessary. Each of these has until the present time been under the control of a separate board. The five are now placed under the control of a single board, with the director of registration and education as chairman, and with the superintendent of public instruction (a constitutional officer) as secretary.

This consolidation of independent state agencies may properly be regarded as the most important single thing done by the code. However, two other things of importance should be mentioned: (1) As a part of the plan of consolidation, provision is made for substantially all purchases for the state government and its institutions through the new department of public works and buildings. (2) Through the department of finance, budget information is to be collected and a budget is to be submitted to the general assembly by the governor at the beginning of each biennial session. The plans for central purchasing

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and for a budget could hardly have been carried out without the consolidation of previously independent departments and offices.

This reorganization does not affect either the constitutional or the present statutory functions of the state officers created by the constitution. Other than the governor there are now six such offices: The lieutenant-governor, the attorney general, the auditor of public accounts, the superintendent of public instruction, the secretary of state and the state treasurer. The lieutenant-governor has no administrative functions, but each of the other constitutional state officers has large functions under the constitution and other functions conferred by statute; for example, the auditor of public accounts has supervision over state banks, and the secretary of state issues licenses for motor vehicles. The state library is also under the supervision of the secretary of state.

A number of offices or departments created by statute are not brought under the new administrative organization. The University of Illinois retains its independent organization; the board of equalization remains the state tax authority; the adjutant-general is not included in the new organization nor is the state civil service commission. Something can still be done by statute to complete the administrative reorganization, and to bring all the executive agencies of the state under the nine new departments. However, so far as the constitutional state officers are concerned, a change can be made only by an amendment or revision of the constitution.

The civil administrative code is the most important enactment relating to governmental organization, but several other important actions were taken by the general assembly. Possibly the most far-reaching was that submitting to a popular vote the question of calling a constitutional convention. This vote will take place in November, 1918, and if a majority of those voting at the 1918 election favor a convention, one will be assembled some time during the succeeding year.

The state civil service law was materially revised, the most important change being that which does away with the requirement of a hearing in order to remove any employee who is under the operation of the law. Hearings are permitted under the amended law only if it is alleged that a removal was made for political, racial or religious reasons.

With respect to absent voting, two measures were enacted: One relating to absent voting generally, and the other providing for absent

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voting by persons in the military service. With respect to voting, another important measure was one which provides for less frequent general registration and for central registration between the regular election periods, in the city of Chicago.

From the standpoint of local government two measures of importance were enacted: one abolishes the township collector in substantially all cases and concentrates the work into the hands of the county collector; another substitutes in townships and road districts a single highway commissioner for three commissioners.

In the field of social legislation there were several important enactments. Perhaps the most important measure in this field is that which makes the plan of workmen's compensation compulsory for extra-hazardous employments. Another measure of importance is a revision of the child labor law, which imposes materially greater restrictions upon the employment of children under the age of sixteen years. A measure which requires the payment of wages in cash or only in orders redeemable in cash is another of material interest to labor.

For some time there has been a vigorous agitation for a stringent regulation of private banking, and this agitation was strengthened by the failure in recent years of a number of private banks. A measure enacted in 1917 will entirely prohibit private banking after January 1, 1921, if the measure is ratified by the people in November, 1918. Under the constitution of Illinois an amendment to the banking law must receive popular approval before it comes into effect.

By a strict regulation of small loans, accompanied by the licensing of those engaged in the business of making such loans, and by so-called "blue sky" legislation, which seeks to prevent fraud in the sale and distribution of stocks, bonds and other securities, Illinois places itself in line with a number of the more progressive states in these respects.

Another piece of social legislation of some importance is that which provides for a penal farm for lesser offenders, so that such offenders may be removed from county jails and dealt with in places where reformation is more likely to be accomplished.

A piece of legislation which took a great deal of the attention of the general assembly, and which attracted wide attention, was the proposal for a $60,000,000 bond issue for good roads. This measure outlines in detail a scheme of road construction and provides for a method of issuing bonds and meeting principal and interest upon such bonds. Under the constitution this plan, involving as it does the creation of a state debt, must be submitted to the people of the state before it is to

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become effective, and must receive a majority of the votes cast for members of the general assembly at the election to be held in November, 1918.

Within the field of educational legislation, two measures of somewhat general interest were enacted: One substantially requires uniformity of prices of text books sold within the state and forbids frequent changes in text books; the other provides a retirement and pension fund for teachers in state institutions.

A general medical practice act is the most important enactment within the field of medical legislation, although another measure of some importance is that which permits a consolidation of towns or road districts into larger areas for local health administration. Perhaps within the field of sanitary legislation should be mentioned a measure enacted for the purpose of regulating the cold storage of articles of food, although this regulation is also for other than purely sanitary purposes.

The war consumed a good deal of the time of the Illinois general assembly of 1917 and made necessary several pieces of additional legislation. Much of this legislation was in the form of appropriations, but a measure was passed creating a state council of defense, another providing for a reserve militia to take the place of the organized national guard which is called into active service, and still another measure amends the present military and naval code in several essential respects in order to obtain a more effective military organization and better sanitation in military camps.

Several special investigating commissions were authorized: (1) a health insurance commission, to investigate causes of sickness and accidents not compensated by the workmen's compensation law; (2) an industrial survey commission is created for the purpose of studying the conditions of industry in which women are engaged as workers; (3) by joint resolution of the two houses a nonpartisan commission is authorized to formulate necessary legislation for the revision of the primary election and election laws of the state; but as no appropriation is carried for this investigation, the work if undertaken must be done voluntarily; (4) a pension laws commission is created, to continue the investigation begun by an efficient commission appointed under an act of 1915. The commission appointed under an authorization of two years ago made an important report, and the new commission will be substantially a continuation of the old.

The general assembly of 1917 set a new standard of appropriations,

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the total for the biennium 1917–1919 amounting to $50,558,441, although the rate of increase of state expenditures was materially reduced as compared with previous sessions. The appropriations in 1911 were nearly $30,000,000, in 1913, about $38,000,000, and for the biennium 1915–1917, about $47,500,000. In fact there is an actual reduction of total appropriations, as contrasted with the preceding biennium, when it is taken into consideration that deficiency appropriations of more than one and one-third million had to be made, that heavy military appropriations were necessary, and that through a change in financial policy something like a million and a half of receipts by institutions now are turned into the state treasury and must be reappropriated, this amount being thus added for the first time to the total of legislative appropriations.

For the first time in the history of the state all of the large appropriation measures followed a uniform arrangement with a classification into ten standard items. This uniformity of classification makes it possible to keep uniform accounts for the expenditures of the state government.

In the final legislative result the governor had a decisive influence. The civil administrative code was directly due to his efforts, and without his vigorous advocacy there would not have been any banking legislation or the adoption of a resolution for a vote upon the subject of a constitutional convention. With respect to a number of other measures his positive influence was great.

With respect to the governor's negative share in legislation, a record was made. Vetoes of appropriation bills and items totaled over $1,000,000, as contrasted with about a million and one-half for the preceding biennium; but upon substantive legislation the number of vetoes exceeded all previous records under the constitution of 1870, and almost equalled the total of Governor John M. Palmer, who in the last session of free local and private legislation in Illinois (1869–70) vetoed seventy-two bills. Altogether, Governor Lowden vetoed sixty-nine bills, of which twenty-four were senate bills and forty-five were house bills. Of the 407 measures passed by the two houses, 69 were vetoed, and 113 were permitted to become law without the governor's signature.

In any review of the work of the Illinois general assembly of 1917, comment should be made upon the business-like conduct of the internal affairs of the two houses. Under competent presiding officers and with conscientious chairmen of contingent expense committees,

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unnecessary expenses and unnecessary employees were done away with, the total expenses of the 50th general assembly being less than half that of the regular sessions of the 48th and 49th general assemblies, and this in spite of the fact that the house in the 49th general assembly had made an enviable reputation for economy.

W. F. Dodd.

Index to State Legislation. The Bulletin of the Public Affairs Information Service for September 15, 1917, is a partial *Index to Legislation*, passed in 22 states in 1917, classified by subjects. A brief summary of some of the more important topics is here presented:

Constitutional Changes. Measures to submit the question of calling a constitutional convention were passed in Illinois, Nebraska and North Carolina. The California legislature submitted 10 constitutional amendments, and the South Dakota legislature submitted 11 constitutional amendments.

Suffrage and Elections. Acts providing for partial woman suffrage were passed in Indiana, Nebraska, North Dakota, Rhode Island and Vermont. All but the last provided for woman suffrage for presidential electors. In Indiana and South Dakota, constitutional amendments for woman suffrage were submitted. Absent voting laws were enacted in nine states: Illinois, Indiana, Maryland, Minnesota, Montana, North Carolina, South Dakota, Texas and West Virginia.

State Administration. In addition to the general consolidation of state departments by the Illinois civil administrative code, partial measures of consolidation were passed in some other states, and a number of new state administrative agencies were created. In Kansas the boards of control, corrections and administration were consolidated into one central board of administration, empowered to employ a state manager. In Rhode Island a penal and charitable commission was established, in place of two boards of control and supply, and charities and correction. In Vermont a director of state institutions was provided, to have charge of charitable and correctional institutions, in place of former boards; and a commissioner of industries was established, consolidating the functions of the industrial accident board and the state factory inspector. In North Carolina a consolidated board of directors for the three state insane asylums was established; and also a state board of charities, with supervision over charitable and penal institutions, and to appoint a commissioner of public welfare.

Highway departments were organized or reorganized in nine states:

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Delaware, Indiana, Minnesota, Montana, North Dakota, Oregon, South Dakota, Texas and Wyoming. In Nebraska a state department of health was established, based on the recommendations of the United States public health service. State police organizations were authorized in New York, Rhode Island and South Dakota. Boards of nurses' examiners were established in North Carolina and South Dakota; and the licensing of optometrists was provided for in Pennsylvania and Wyoming.

State Finance. Measures making some provisions towards a state budget were passed in Delaware, Kansas, North Carolina and South Dakota. In California and West Virginia constitutional amendments for a budget system were submitted; and in Massachusetts a legislative investigating committee was established on this subject. In Vermont a board of control was established with supervision over all departments as to clerical expenses, finance, printing, etc.

In three states—California, Delaware and South Dakota—proposals were approved for a conference to consider a definite policy for the separation of state and federal taxes.

War Measures. Acts providing for state councils of defense or public safety commissions have been passed in California, Illinois, Maryland, Minnesota, Nebraska, Pennsylvania, Texas and West Virginia. A number of states passed laws for the reorganization of the state militia, so as to comply with the United States laws; and measures for a reserve militia or home defense force were enacted in California, Illinois, Maryland, Massachusetts, Pennsylvania and Texas.

New York state has established a food supply commission, authorized to adopt all necessary measures to assure adequate food supply in the state, and to buy and distribute at cost seed for staple productions. California and South Dakota have created state market commissions; and Pennsylvania and West Virginia have organized bureaus of markets in the state departments of agriculture.

Labor Legislation. Child labor laws were enacted in Delaware, Illinois, Kansas, New York, Texas and Vermont; acts regulating the hours of labor of women and children in Delaware, Illinois, Kansas, Massachusetts, Montana, Vermont and Wyoming; and mother's pensions laws in 11 states: Arizona, Delaware, Kansas, Minnesota, Montana, Oregon, South Dakota, Texas, Vermont, West Virginia and Wyoming.

Workmen's compensation laws were passed in California, Delaware, Kansas, Nebraska and South Dakota; and such laws were amended or

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revised in Illinois, Minnesota, New York, Rhode Island, North Dakota, Texas, Vermont and Wyoming.

Liquor Legislation. Prohibition laws were enacted in Arizona and Indiana, the latter to go into effect on April 2, 1918. Constitutional amendments for state prohibition were submitted in Minnesota and Wyoming. Restrictive laws were passed in Delaware, Georgia, Kansas, Massachusetts, Montana, Nebraska, New York, North Dakota, Oregon, South Dakota and West Virginia.

Local Government. Laws authorizing the manager form of municipal government have been passed in Kansas, Montana, Nebraska, Pennsylvania (for boroughs) and Vermont (for towns). In North Carolina an act providing four optional plans of municipal organization has been passed. In Illinois an increase in the city tax rate has been authorized, subject to local referenda; and in California several measures have been enacted providing for city planning.

Acts authorizing the creation of special districts for particular purposes have been passed in several states:—for irrigation districts, in North Carolina, Oregon and Texas; for public health and sanitary districts in California, Illinois and Indiana.

J. A. F.

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JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

University of Illinois

Aliens—Naturalization—Continuity of Residence. United States v. Jorgenson. (U. S. District Court. December 2, 1916. 241 Fed. 412.) An alien who begins his residence in the United States and after an interval of five years makes application for naturalization, has not forfeited his right thereto because in the meantime, without intending to abandon his domicile in the United States, he spent a considerable period of time in the canal zone in the employ of the isthmian canal commission.

Alien Enemies—Naturalization—Time of Application. United States v. Meyer. (U. S. Circuit Court of Appeals. April 12, 1917. 241 Fed. 305.) In re Jonasson. (U. S. District Court. April 28, 1917. 241 Fed. 723.) In re Kreuter. (U. S. District Court. May 25, 1917. 241 Fed. 985.) In re Nannanga. (U. S. District Court. July 5, 1917. 242 Fed. 737.) In re Haas (U. S. District Court. July 16, 1917. 242 Fed. 739.)

The defendant in the case of United States v. Meyer was a native of Germany. On January 5, 1917 he filed his petition to become a citizen of the United States. At the time of the hearing in court on this petition which, by the provisions of the statutes must take place after an interval of at least ninety days, a state of war existed between the United States and Germany. Section 2171 of the Revised Statutes provides that "No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States." The circuit court of appeals decided in this case that the "time of his application" means the time of filing the petition rather than the time of the hearing on the petition. The defendant was accordingly admitted to citizenship. The court pointed out that prior to 1906 the filing of the petition and the hearing on it were contemporaneous and

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the apparent intention of congress in requiring the ninety day interval was to allow the government to investigate the antecedents of the petitioner and his witnesses. It was held to be the fair and reasonable construction of the statute that the application was completed as soon as the petition was filed. In the case of In re Kreuter the United States district court for the southern district of California followed the decision in United States v. Meyer, as did the United States district court for the southern district of Georgia in the case of In re Nannanga. The United States district court in Maryland, however, declined to be bound by the decision of the circuit court of appeals, and in the case of In re Jonasson refused to naturalize a German citizen whose petition for citizenship was filed less than ninety days before the declaration of a state of war. The same view was also adopted by the United States district court for the northern district of Texas in the case of In re Haas.

Alien Enemies—Protection of Property Rights in War Time. Posselt v. D'Espard. (New Jersey Equity. April 21, 1917. 100 Atl. 893.) The complainants sought relief in equity to prevent the defendants from deliberately wrecking a New Jersey corporation of which the complainants are stockholders. The defendants raised the preliminary objection to the prosecution of the cause on the ground that the action was brought by alien enemies. The individual complainant is a subject of Germany residing in this country who has taken out his first naturalization papers. Joined with him in the action was a German corporation which was the majority stockholder in the New Jersey corporation. In the judgment of the court the degree of protection to be accorded to the liberties and property of alien enemies must be regarded as a matter of public policy. The President's proclamation declaring a state of war set forth that policy. "The President has very carefully distinguished between the German government and the German people, and the sins of that government ought not to be visited upon the people except so far as the legitimate interests of the United States require." There is no national interest demanding the withdrawal of judicial protection from the property of alien enemies resident here or abroad. "Tolerance is the keynote of the President's proclamation, and by that I am bound."

Alien Enemy—Suspension of Right to Sue During the War. Plettenberg, Holthaus and Co. v. I. J. Kalmon and Co. (U. S. District

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Court. May 21, 1917. 241 Fed. 605.) The plaintiffs who are citizens and residents of Germany brought action prior to the declaration of a state of war between the United States and Germany to recover certain moneys owed to them by the defendants. The defendants sought a dismissal of the suit on the ground that the plaintiffs had become alien enemies. The court recognized the importance of not according to the plaintiffs a form of relief which might enhance the strength or resources of an enemy power but was of the opinion that the interests of the United States would be adequately protected if the plaintiff's suit were suspended until the restoration of peace. The action was accordingly not dismissed but ordered continued.

Congress—Power to Punish for Contempt. Marshall v. Gordon. (United States. April 23, 1917. 37 Sup. Ct. Rep., 448.) This case involved the right of the house of representatives to punish for contempt a district attorney of the United States for publishing in the newspapers statements regarding a committee of the house which were defamatory in character and reflected upon the dignity and integrity both of the committee and the house.

The court held that the house of representatives has no such power. There is no definite grant of such authority in the Constitution and to establish it by implication would necessitate a repudiation of the fundamental theory of the separation of powers in the national government since it would involve the conferring of judicial authority upon the legislative branch of the government. After an elaborate review of the previous cases relating to this point the court declares that the houses of congress enjoy the power of punishing for contempt only where the exercise of such power is necessary for self preservation. The contempt alleged in the present case was not of this character but related merely to the effect of the obnoxious letter upon the public mind.

Conscription—Constitutionality of the National Draft Act. Claudius v. Davie. (California. May 29, 1917. 165 Pac. 689.) The contention that the national draft act violates the thirteenth amendment to the Constitution of the United States and also the clause of the constitution of California forbidding slavery and involuntary servitude is dismissed in this case with the terse comment that "the claim is utterly without merit."

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Constitutional Amendments—Time of Taking Effect. Reade v. City of Durham. (North Carolina. May 30, 1917. 92 S. E. 712.) The constitution of North Carolina provides that constitutional amendments, after being passed by the requisite majority of the two houses of the legislature, shall be submitted to the people of the state at the next general election in "such manner as may be prescribed by law." It further stipulates that "in event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the constitution of the state." The legislature passed a statute submitting to the people three amendments, one of which placed restrictions upon the power of the legislature to pass special legislation upon certain specified topics, and provided that, if adopted, the amendments should go into effect on January 10, 1917. The amendments were adopted at the general election in November, 1916. On January 9, 1917, the legislature passed a special law applicable to the city of Durham dealing with one of the topics enumerated in the amendment referred to. In a taxpayer's action it was urged that the constitution gave the legislature no power to fix a time for going into effect of amendments and that the amendments mentioned had gone into effect immediately after the election in November and that the statute was accordingly void by reason of its being in conflict with the new constitutional provision. The court repudiated this view. Under such an interpretation an amendment would be legally binding before the votes on it were counted if those votes proved later to be in favor of the amendment. Such a rule would be unreasonable. The time of going into effect is as much a part of the submission as the amendments themselves and it was held to be within the authority of the legislature to determine that time. The people adopted the amendments with the full knowledge that they would be put into force at the time arranged for by the legislature and the precedents of other states support the view that such time may be arranged for by statute.

Constitutional Convention—Power of Legislature to Call. Bennett v. Jackson. (Indiana. July 13, 1917. 116 N. E. 921.) This was a taxpayer's action setting up the unconstitutionality of the act of 1917 providing for the election of delegates to a constitutional convention to revise the constitution of Indiana and such parts of the act of the same year conferring a partial right of suffrage upon women as gave them the right to vote for delegates to such convention. The decision of the court regarding the validity of the first of these acts made it

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unnecessary to consider that of the second. Previous decisions have established the right of the courts to determine the legitimacy of the action of the legislature in calling a constitutional convention. Such action is not strictly legislative in character and it must therefore find its sanction either in the constitution or in some direct authorization from the people who, under the bill of rights, retain their authority to alter the organic law of the state. When the state constitution is silent upon the subject of the calling of a convention, and this is the case in Indiana, if there is a well established custom or rule in the matter such custom or rule must prevail. The usage in most states and in Indiana has been to submit the question of calling a constitutional convention to a vote of the people. Such a referendum was held in 1914 and resulted in an overwhelming vote against the calling of the convention. No subsequent expression of the popular will has occurred and this must accordingly be regarded as a binding mandate upon the legislature until reversed by a later popular vote. The statute providing for the election of delegates to the convention is accordingly unconstitutional.

Counties—Classification by Population—Local and Special Laws. Commonwealth v. Gumbert. (Pennsylvania. February 26, 1917. 100 Atl. 990.) This case involved the constitutionality of an act requiring "counties now or hereafter containing a population of 750,000, and not more than 1,200,000 inhabitants" to establish and maintain schools for delinquent girls. The statute was held invalid as being a special and local law inasmuch as the classification of counties involved was defective. The only legitimate method of classifying counties was declared to be by population but such classification must rest either upon a necessity "springing from a great or urgent public convenience" or must arise "from peculiarities clearly distinguishing those of one class from each of the other classes." The classification here involved is defective from both points of view. The law is designed to apply to Allegheny county alone. It excludes Philadelphia county as being above the 1,200,000 mark and excludes every other county in the state as having insufficient population. The classification attempted by the act was both arbitrary and artificial.

Courts—Committee of Judges to pass on questions of Appeal—Constitutionality. San Antonio and A. P. Ry. Co. v. Blair. (Texas. June 27, 1917. 196 S. W. 502.) This case called into question the consti-

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tutionality of a statute passed in 1917 authorizing the chief justice of the supreme court, or any two of the justices thereof, to designate a committee of three of the justices of the courts of civil appeals which should be empowered to pass upon petitions for writs of error except in certain specified cases and either grant or refuse such requests. The validity of the act was upheld. The court began its opinion by remarking that if it had regarded the act as unconstitutional it would not have proceeded to put it into effect. The act did not create a new court but merely added to the duties of one already existing. By the constitution of the state it is provided that the court of civil appeals shall have "such other jurisdiction as may be prescribed by law." The right of appeal to the supreme court of the state is nowhere mentioned in the constitution, nor the method of prosecuting such an appeal and a statute modifying it does not infringe upon any constitutional right. The purpose of the act was the salutary one of relieving the great congestion of work resting upon the court of last resort.

Employment Agencies—Constitutionality of Act Prohibiting. Adams v. Tanner. (United States. June 11, 1917. 37 Sup. Ct. Rep., 662.) A statute of the state of Washington made it a criminal offense to charge a fee to any worker for furnishing employment or information leading to it. In the view of the court this act was not regulatory but prohibitory. While there may be evils connected with private employment agencies no such drastic action as this was justified as an exercise of the police power. It was held that the act infringed the rights of individuals under the due process clause of the fourteenth amendment to engage in a useful and lawful business.

Employers' Liability—Exclusiveness of Federal Act in Interstate Commerce. New York Central R. R. Co. v. Winfield. (United States. May 21, 1917. 37 Sup. Ct. Rep., 546.) Erie Railroad Co. v. Winfield. (United States. May 21, 1917. 37 Sup. Ct. Rep., 556.) In the first of these cases an employee of the railroad was injured through no negligence upon the part of any one but by reason of one of the inevitable risks of his occupation. He was accorded compensation under the workmen's compensation law of the state of New York in which the injury occurred. He was engaged in interstate commerce at the time of the accident and the contention of the railroad was that his only remedy would lie under the federal employers' liability statute which was exclusive in its application to all cases arising out of

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interstate commerce. This would afford the injured man no relief in the present case inasmuch as the federal statute recognizes a liability resting upon the carrier only in cases of negligence. The court accepted this view of the matter. It declared that the purpose of congress in passing the federal employers' liability act was to provide a uniform rule of liability for all cases involving interstate commerce and it was beyond the authority of a state to give effect to any law which would interfere with the uniform application of that act.

The facts in the second case were substantially the same. The New Jersey workmen's compensation act, however, made it elective with the employer whether he would come under its provisions but his election to do so was to be inferred from his failure to state the contrary. This presumption of acceptance of the act rested against the railroad in this case. Here again, however, the federal statute was held to preclude the penetration into the field of any state law and as no negligence could be proved the injured workman had no relief.

Jury—Right to Trial by in Municipal Court for Misdemeanor. State v. Hirsch. (Vermont. May 1, 1917. 100 Atl. 877.) The defendant was convicted in a municipal court of disposing of property by lottery. He was tried without a jury and while he did not expressly waive his right to a jury trial he did not protest against its omission. The contention of the state that his action constituted a waiver of the trial raised the issue whether or not such waiver could be made under the constitution and existing laws. Prior to 1915 an appeal lay from all minor courts to the county courts where trial for all offenses was by jury, but in that year final jurisdiction to try certain misdemeanors, among them the one with which the defendant was charged, was conferred by statute upon the municipal courts. The constitution of the state provides that "No person shall be convicted of an offense" unless by the admission of guilt or jury trial provided for. This clause is mandatory and leaves room for no waiver of trial by jury. The municipal court was accordingly without jurisdiction to try the defendant without a jury.

Municipal Corporations—Constitutionality of Optional Charter Law. Cleveland v. City of Watertown. (New York. February 1917. 165 N. Y. Sup. 305.) This was a taxpayers' action brought in the supreme court of New York to restrain the city of Watertown on the grounds of unconstitutionality from putting into effect the city manager plan of

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government provided for in the optional charter law of 1914. The voters of the city had declared in favor of this form of government in an election held in 1915. The court held the optional charter law to be unconstitutional because it was not a completed statute when it left the hands of the legislature. The act contemplated the enactment by the city council of ordinances which are to replace those previously in force and the court concluded "it is the discretion of the city council, therefore, and not the action of the legislature, which makes the statute complete." The act was also declared invalid on the ground that it delegated to the municipality power "to regulate duties that are not purely municipal, but involve the performance of state functions." In permitting the municipal regulation of police, health, charities, and tax assessment "the effect of the statute is to permit the city council to legislate for the state at large." A further defect was the failure of the act to restrict the power of the city in the matter of the rate of taxation as required by the state constitution. Inasmuch as the unconstitutional parts of the act were held to be not separable the whole law was declared invalid.

Police Power—Constitutionality of Chattel Loan Law. Wessell v. Timberlake. (Ohio. November 21, 1916. 116 N. E. 43.) The Ohio chattel loan law prohibited the making of loans on plain notes, chattel mortgages, wage assignments or similar securities at a rate of interest in excess of eight per cent without first securing a license. This license was to be issued by the superintendent of banking only after the payment of a fee and the compliance with requirements designed to protect borrowers somewhat similar to the provisions of the blue sky laws. The license could be revoked by the superintendent of banking for violation of the law. A variety of constitutional objections were raised by the defendant who was convicted of continuing in the chattel loan business without a license. The law as a whole was attacked in the first place as a violation of the guarantees of the fourteenth amendment and similar provisions of the Ohio constitution. The court disposed of this by pointing out that it had long been established that the regulation of the rate of interest and the business of loaning money was a proper exercise of the police power of the state. The machinery provided in the act for the issuance of licenses is not open to attack inasmuch as the duties of the superintendent of banking in that connection are ministerial and not discretionary. The classification of businesses involved is reasonable. The question whether

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the procedure for the revocation of the license would work a violation of the due process clause is not a question which the defendant is at liberty to raise since he never had applied for a license nor had one revoked.

Police Power—License for Sale of Weapons Required by Ordinance. Biffer v. City of Chicago. (Illinois. June 8, 1917. 116 N. E. 182.) It is a reasonable exercise of the police power of the city to forbid the sale or disposal of deadly weapons except by persons duly licensed by the mayor after the payment of a fee, to require a daily report to the police authorities of all such weapons sold, to forbid the sale of such weapons to persons not having a license duly issued by the superintendent of police, and to prohibit entirely the display and advertisement of deadly weapons. This ordinance does not offend against the constitutional provisions guaranteeing the right to bear arms. It does not set up a classification which is arbitrary and unreasonable, nor does it confer unwarranted power upon the administrative authorities clothed with the power to issue and revoke the licenses provided for.

Public Utilities—Regulation by State Commission—Control by City—Obligation of Contracts. City of Chicago v. O'Connell. (Illinois. June 7, 1917. 116 N. E. 210.) The authority of the public utilities commission to enforce an order affecting the service to be rendered by the Chicago City Railway Company was questioned in an action brought by the city of Chicago. The court sustained the power of the commission. It was pointed out that under previous decisions of the court the requirement in the state constitution that the consent of the local authorities be secured to any grant of the right to construct or operate a street railway conferred upon the city merely the power to determine whether such street railways should be established and upon what streets. It was further held that the provisions of the public utilities act excepting from the control of the state commission municipally owned or operated public utilities did not apply to utilities which the municipality had by contract obtained the option to purchase at a future time as was the case with the street railways in question. The state legislature has full power to regulate public utilities directly, through a delegation of power to municipalities, or through subsequent recall and redelegation of such power to an agency such as a state commission. The city of Chicago had no authority to enter into permanently binding contracts with the street railway com-

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pany which would limit the legitimate exercise of the police power over such public utilities and an order of the state public utilities commission which is a valid exercise of the police power does not impair the obligation of contracts because it conflicts with the terms of any contracts so entered into by the city.

Statutes—Constitutionality Determined only when Necessary. Daly v. Garvin. (New Jersey. June 18, 1917. 101 Atl. 272.) This was an action in quo warranto to determine the right of the defendant to hold the office of city commissioner. The election was conducted under a system of preferential voting and resulted in the election of the defendant over the relator by a small plurality. In accordance with the terms of the statute concerning the conduct of the election 192 ballots were cast out because they did not contain first choice votes for five candidates for commissioner. The counting of these ballots would result in the election of the relator, who rests his case upon the alleged unconstitutionality of the provision requiring the discarding of these ballots. The court decided that the provision in question is not separable from the rest of the statute and that the unconstitutionality of this particular part would render invalid the entire law. If the whole statute was void then the election itself was without legal authority. If the relator, therefore, succeeded in maintaining his contentions he would destroy not only the right of the defendant to the contested office but his own as well. The court accordingly refused to decide the constitutional question raised since it was futile to pass upon it. "To what end should a court consider and decide a constitutional question, which, if decided as the appellant argues it should be, would be of no avail to him as a suitor."

Statutes—Emergency Clause Precluding Referendum—Infringement of Municipal Home Rule. Lemaire v. Crockett. (Maine. July 3, 1917. 101 Atl. 302.) The legislature passed a statute placing the entire control of the police department of the city of Lewiston in the hands of a commission of three appointed by the governor. An emergency clause was appended to the act to prevent the invoking of the referendum and causing the act to take effect immediately upon its approval by the governor. The state constitution provides that the emergency clause should be attached only to such measures as are immediately necessary to the public peace, health or safety and shall not include an infringement of the right of home rule for municipalities.

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It was held that this law did infringe upon the right of home rule of the city of Lewiston inasmuch as it ousted the city from a previously occupied field of local self government. It was accordingly unconstitutional for the legislature to attach the emergency clause to the statute. The state legislature, however, had unquestioned power to pass the act in question without the emergency clause. The emergency clause was held to be clearly separable from the rest of the act and consequently the validity of the statute itself was not disturbed. The effect of this decision, therefore, was to render the law a nonemergency act and permit the invoking of the referendum at any time within period specified in the constitution.

War—Effect of Foreign Embargo on Contract. Thaddeus Davids Co. v. La Roche Chemical Works. (New York. July 13, 1917. 166 N. Y. Supp. 179.) The defendant contracted with the plaintiff to supply carbolic acid crystals at a stipulated price with the condition attached that "Contingencies beyond our control, fire, strike, accidents to our own works or to our stock, or change in tariff, will allow us to cancel this contract or any part of the same at our option." The court decided that the defendant corporation could not avail itself of this option on the ground that the European countries from which it derived its supply placed an embargo on the exportation of carbolic acid crystals at the outbreak of the war. The rule of ejusdem generis applied to the enumeration of contingencies named in the contract would preclude placing the embargo within that list.

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NEWS AND NOTES

EDITED BY FREDERIC A. OGG

University of Wisconsin

The fourteenth annual meeting of the American Political Science Association will be held at Philadelphia, December 27 to 29. The American Historical Association, the American Economic Association, and other societies will hold their annual meetings at the same time and city. The program of the American Political Science Association, with information as to local arrangements, will be mailed to the members of the association early in December. As thus far arranged, the program will be as follows: The first session on Thursday morning, December 27, at ten o'clock, will be on constitutional law, with papers by Professors T. R. Powell, of Columbia University, and Charles G. Haines, of the University of Texas. In the afternoon, the subject will be political theory, with a paper by Professor W. W. Willoughby and discussion. In the evening the presidential addresses will be given at a joint session. At the Friday morning session will be considered the nature and future of international law; in the afternoon there will be a joint session with the Historical Association on federalism; in the evening, papers on Russia by the Russian ambassador and others will be presented. On Saturday morning the annual business meeting of the association will be held. In the afternoon there will be a joint session with the American Economic Association; and in the evening, a general meeting of the members of all the associations. There will also be three luncheon conferences; one dealing with problems of instruction in political science; a second, with the influence of political science on public opinion; and a third, with the gathering of scientific data on the operation of American government, and the development of plans for reorganization. These conferences will be in charge of Professor R. G. Gettell, of Amherst, Professor Karl C. Geiser, of Oberlin, and Mr. H. S. Gilbertson, secretary and treasurer of the National Short Ballot Organization, respectively.

The Hotel Bellevue-Stratford has been tentatively selected as headquarters. Other hotels are the Adelphia and the Walton. Reservations should be made as early as possible.

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Dr. A. N. Holcombe, absent on leave from Harvard University, has been appointed associate professor of political science for one year at Leland Stanford University.

Professor A. S. Johnson has leave of absence for the year from Leland Stanford University and will continue his connection with *The New Republic.*

Professor D. Y. Thomas, of the University of Arkansas, is on leave of absence for the year. His courses are in the hands of Dr. A. P. James, formerly of Ohio Wesleyan University.

Dr. B. A. Arneson, of the University of Minnesota, has accepted a professorship of political science at Ohio Wesleyan University.

Dr. H. S. Quigley, of Princeton University, has been appointed to the chair of political science at Hamline University.

Professor L. S. Rowe, of the University of Pennsylvania, is on leave of absence for the year, and is acting as assistant secretary of the treasury.

Dr. J. M. Mathews, of the University of Illinois, has been promoted from assistant professor to associate professor of political science.

Mr. Edmund Brown, Jr., who served as instructor in political science in the University of Missouri during the second semester of the past academic year, has been appointed secretary of the Arkansas state board of charities and corrections recently established.

Mr. Hessel E. Yntemia has been appointed to an instructorship in political science at the University of Michigan.

Dr. R. M. Story, of the University of Illinois, has been granted leave of absence for a year, and will be in Russia in the service of the Y. M. C. A. war council.

Professor W. F. Dodd will remain with the Illinois legislative reference bureau, on leave of absence from the University of Chicago. During the next year the bureau will conduct a constitutional survey in preparation for a constitutional convention which will be assembled if a

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favorable popular vote is had in November, 1918. In connection with this work, several new members have been added to the staff of the bureau.

Mr. R. C. Journey, instructor in political science at the University of Missouri, and legislative librarian during the last session of the Missouri general assembly, has been granted a year's leave of absence. He will spend the year in graduate study at Columbia University. His work at Missouri will be in charge of Mr. Thomas Barclay, who during the past year was in the graduate school of the University of Chicago.

Dr. Stanley K. Hornbeck, of the University of Wisconsin, has been advanced from assistant professor to associate professor of political science. He is on leave of absence for the present academic year. During the first half of the year he is with the United States tariff commission.

Professor Frederic A. Ogg has been advanced to a full professorship of political science at Wisconsin.

Professor Chester Lloyd Jones, of the University of Wisconsin, is on leave of absence for the year. His time will be given to investigation of the Mexican problem, and part of it will be spent in Mexico. Professor Frederic A. Ogg will act as Secretary-Treasurer of the American Political Science Association during his absence.

Professor Charles A. Beard has retired from his professorship of politics in Columbia University, in protest against what his letter of resignation terms the narrow and reactionary policy of a group of the trustees of the institution.

Professor W. A. Schaper's connection with the University of Minnesota has been severed. Professor Schaper will devote the year to research and writing.

Professors Jesse S. Reeves and Ralston Hayden, of the University of Michigan, are on leave of absence this year. The former has accepted a commission as captain in the aviation section of the signal officers' reserve corps. The latter is in active service as lieutenant in the naval reserve.

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Prof. William MacDonald, formerly of the history department of Brown University, has returned from Europe, where he made a study of labor and social conditions for the New York *Nation*. He is this year lecturer in the department of political science of the University of California, giving the introductory course on government.

David P. Barrows, major of cavalry in the United States reserve corps, formerly professor of political science and dean of the faculties of the University of California, has been ordered by the war department to the Philippines in the capacity of chief intelligence officer. Major Barrows was formerly director of the bureau of education in the Philippines.

Professor Charles G. Haines is at the University of Chicago for the year, on leave of absence from the University of Texas.

Dr. M. L. Bonham, Jr., professor of history and political science at Louisiana State University, will hereafter give courses in history only.

The thirteenth annual conference of the Chinese Students' Alliance in the United States was held at Brown University during the past summer.

A seminar in the public law of modern European states was organized at the University of California in the spring term of 1917. Its object is announced to be the training of men who will teach the subject in American universities, and the broadening of the outlook of persons who expect to teach history or law, as also of persons who expect to practice law after having received a broad theoretical training.

During the Cincinnati meetings of the historical and political science associations in December, 1916, a project was launched for the founding of a quarterly review to deal on broad lines with the history and institutions of the New-World states arising from the colonizing efforts of Spain and Portugal; and a committee on organization was appointed and instructed to take the necessary steps. The committee announces that sufficient funds have been guaranteed to assure the success of the plan, and the first number of the Review is expected to appear by February, 1918, at the latest. Subscriptions and con-

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tributions to the guarantee fund may be sent to J. A. Robertson, chairman of the committee, at 1422 Irving Street, Washington, D. C. It is expected that the subscription rate of the magazine will be three dollars.

The annual meeting of the National Municipal League will be held at Detroit during the week of November 20. At the same time will be held meetings of the city managers' association and the association of research bureaus.

At the last session of the Illinois legislature, the city of Chicago presented a number of bills enlarging the powers of the municipality. The list included: authority to regulate the rates and service of public utility companies; to establish a zoning system; to adopt a nonpartisan ballot for city elections; three bills designed to facilitate the execution of the program recently outlined by the traction commission; to permit certain changes in the handling of special assessment funds; to establish branches of the house of correction more than three miles outside the city limits, intended to permit the location of a farm colony, for which bonds have been voted; to own and operate municipal ice plants; and a number of other measures.

Practically all of the major bills failed of passage, either in one house or in both. Favorable action was secured on special assessment funds and the establishment of branches of the house of correction outside the city limits. In the case of home rule over local public utilities,[1] and the zoning system,[2] elaborate briefs were drawn up and presented to the legislature.

There was passed, however, a resolution for a constitutional convention, through which, if the voters approve, Chicago may be able to obtain broader powers of local self-government. This resolution had been approved by the city council of Chicago, and was strongly urged by many Chicago citizens. It goes without saying that many other factors in the situation than home rule for Chicago are involved in the proposed revision of the constitution.

[1] Memorial Petitioning the General Assembly of Illinois for Home Rule over Public Utilities in Chicago, by Charles E. Merriam.

[2] Building Districts and Restrictions, by Charles E. Merriam, February, 1917.

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Government of the Virgin Islands. On August 4, 1916, a convention between the United States and Denmark was signed at New York providing for the cession to the United States of the Danish West Indies (subsequently renamed the "Virgin Islands");[1] ratifications were exchanged on January 17, 1917, and on March 31 the formal transfer took place by the payment of the purchase price of $25,000,000 and the replacing of the Danish flag by that of the United States. Before the formal transfer—on March 3—congress had passed "An act to provide a temporary government for the West Indian Islands acquired by the United States from Denmark."[2] The decision that the Islands should be administered under the direction of the navy department instead of the war department, and the appointment of Rear Admiral James H. Oliver as the first governor, mark, for the present at least, the last phase of the effort first made by William H. Seward, while secretary of state, to secure for the United States control of the Danish Islands, St. Thomas, St. John, and St. Croix.

But few points of interest are presented by the congressional statute providing a temporary government for the Virgin Islands. Following to some extent the language of the Philippine clause of the army appropriation bill of March 2, 1901, "all military, civil, and judicial powers necessary to govern the West Indian Islands acquired from Denmark shall be vested in a governor and in such person or persons as the President may appoint, and shall be exercised in such manner as the President shall direct until Congress shall provide for the government of said Islands." The governor, who may be an officer of the army or navy, is appointed by the President, subject to senatorial confirmation, and the compensation of all persons appointed is fixed by the President.

In so far as is compatible with the changed sovereignty and not in conflict with the provisions of the act, the election and other local laws of the Islands are to remain in force and to be administered by the local tribunals, but the President is given the power to authorize changes in the laws by the colonial councils having jurisdiction. The judicial tribunals have their jurisdiction extended to cases in which the United States or a citizen is a party, and it is provided that in cases which were reviewable by the courts of Denmark an appeal will lie to the United States circuit court of appeals for the third circuit. The decisions of this court are final except when it certifies questions of law concerning which it desires instructions (and here the supreme court

[1] U. S. Treaty Series, No. 629.

[2] Public, No. 389, 64th Congress; 39 Stat. at L. 1132.

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of the United States may require the whole record to be sent up as if by writ of error) or when the supreme court requires the certification of a case for review and determination.[3]

So far as tariffs on articles coming into the United States from the Islands are concerned, if they are native products or do not contain more than 20 per cent of foreign materials, no duty is charged; as for all other articles, the United States will impose "the rates of duty and internal revenue taxes which are required to be levied, collected, and paid upon like articles imported from foreign countries." All tax laws and custom regulations not incompatible with the changed sovereignty or in conflict with provisions of this act remain in force in the Virgin Islands, "except that articles the growth, product, or manufacture of the United States shall be admitted free of duty." A flat rate of $8 per ton is imposed upon all exports of sugar, even to the United States. Moneys collected under the act do not go into the general fund of the United States treasury, "but shall be used and expended for the government and benefit of said Islands under such rules and regulations as the President may prescribe." Congress appropriated $100,000 to carry out the provisions of the act and $25,000,000 to pay Denmark.

Before the cession the Danish West Indies were crown colonies, administered by a governor with the assistance of a colonial council.

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American War Measures. With the entrance of the United States as an active participant in the now almost universal world war has come an enormous expansion in governmental activities, and with this a great increase in administrative agencies. This development has been based more largely than in other countries on legislation passed by congress. But, as in other countries, the legislation has been enacted to a large degree under executive leadership; and, mainly under the congressional acts, there has been a vast extension of executive authority.

Acts of Congress, while granting extensive powers, have been more specific and more detailed than the legislation of other countries; and while there has been effective executive leadership, there has also

[3] Appeals are limited to the cases covered by Sections 239 and 240 of the Judicial Code. 36 Stat. at L. 1157.

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been active discussion and modification of the proposed measures by the legislative branch. On some measures there has been criticism of delays; but on the whole there has been an impressive body of constructive legislation enacted.

Some measures passed before the present year have had a direct bearing on the conduct of the war. Among these may be mentioned the war risks insurance act of 1914, and the national defense act, the army appropriations act and the shipping board act of 1916, while the federal reserve banks established in 1913 have also been important agencies in financial matters.

Among the measures passed at the special session of congress beginning April 2, 1917, may be noted: the joint resolution of April 6, declaring a state of war to exist between the German government and the government and people of the United States; the war loan acts; the appropriation acts; the selective draft act, of May 18; acts of May 22 to increase the naval forces; an act of June 12 to amend the war risks insurance act; the exports and espionage act of June 21; the foods and fuel regulation acts of August 10; the trading with the enemy act; and the war revenue act.

Executive Orders and Proclamations. The increase of executive authority in time of war is partly indicated by the number and importance of executive orders and proclamations issued by the President. Most of these issued thus far in the present war have been definitely authorized by acts of congress; but, while there has been no such striking illustration of the inherent war powers of the President as the Emancipation Proclamation of President Lincoln, there have been some acts of the President done "by virtue of the powers vested in me as such." Such, for example, were the proclamations of April 6, May 24 and July 13, with reference to German insurance companies and letters patent. The executive order of April 13 creating a committee on public information, and the proclamation of May 23 establishing rules and regulations for the Panama Canal appear to have no statutory authority.

Among the orders and proclamations issued under acts of congress may be noted the executive orders of April 5 and 14, establishing defensive sea areas; the proclamation of April 6 declaring a state of war and defining the status of alien enemies; the proclamation of April 16 relating to treason and misprision of treason; proclamations fixing dates for army registration, and calling the national guard into the service of the United States; and executive orders relating to exports and food administration.

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Administrative Agencies. In addition to the great expansion of activities in the older government departments and bureaus, many new administrative agencies have been organized. A considerable number of these are in the previously established departments. In the department of state a new division of foreign information has been established. In connection with the department of war the new national army has required the organization of thousands of local exemption boards, and of district boards of appeal, as well as the establishment of training camps. Three medical training camps have also been provided, and three new medical divisions have been created in the office of the surgeon general. Other new army and navy agencies are the commissions on training camp activities and the joint boards on aircraft. In the department of agriculture, two new assistant secretaries have been appointed; and a joint labor committee of the departments of agriculture and labor has been established. An emergency fleet corporation has been organized by the United States shipping board for the construction of new ships.

Other agencies have been established outside of the former governmental organizations. Among these may be noted the council of national defense, the committee on public information, the war trade board, the food and fuel administrators, and the war industries board.

Council of National Defense. Section 2 of the army appropriation act of August 29, 1916, established a council of national defense, for the coördination of industries and resources for the national security and welfare, to consist of the secretaries of war, the navy, interior, agriculture, commerce, and labor. It is the duty of this council "to supervise and direct investigations and make recommendations to the President and the heads of executive departments" as to the location and coördination of railways and highways for military purposes; "the utilization of waterways; the mobilization of military and naval resources . . . . ; the increase of domestic production of articles and materials essential to the support of armies and of the people during the interruption of foreign commerce; the development of sea-going transportation; data as to . . . . . military supplies; . . . . and the creation of relations which will render possible in time of need the immediate concentration and utilization of the resources of the nation."

The act also provided for an advisory commission of not more than seven persons, nominated by the council and appointed by the President, to serve without compensation. The commission consists of

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Daniel Willard, chairman, Howard E. Coffin, Hollis Godfrey, Julius Rosenwald, Bernard M. Baruch, Samuel Gompers and Franklin H. Martin. The active work of the council and commission is done under the supervision of the director, Walter S. Gifford.

In connection with this council there has been organized an elaborate series of boards and committees. Directly under the council there have been an aircraft production board, a general munitions board, a munitions standards board, a commercial economy board, an interdepartmental committee, coöperative committees on purchase of army supplies, committees on shipping, women's defense work and coal production, the national research council, and a section on coöperation with states.

Under the advisory commission there have been organized committees on transportation and communications, munitions, engineering and education, supplies, raw materials, labor, and medicine and surgery—and in connection with these a long list of divisional and subcommittees. The members of these committees are experienced business men, serving without compensation.

State and Local Organizations. Official state councils of defense have been established in every state and in the District of Columbia. In twelve states, the councils have been created by act of the legislature; and in the other states councils have been appointed as official agents of the governor. The size, composition and powers of these state councils vary widely. The number of members ranges from 6 or 8 to 100 or more. In a few states they are composed entirely of state officials; in other states some state officers are members *ex officio*; but in most states most or all of the members are not public officials. About twenty states have made appropriations for these councils.

Forty states have reported a state-wide system of county or other local defense councils.

War Industries Board. This was created by the council of national defense on July 28, to act as a clearing house for the war-industry needs of the government; determine the most effective ways of meeting them, and the best means and methods of increasing production, including the creation or extension of industries demanded by the emergency; the sequence and relative urgency of the needs of the different government services; consider price factors, and, in the first instance, the industrial and labor aspects of problems involved, and general questions affecting the purchase of commodities. It also assumed the functions of the general munitions board.

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It is composed of F. A. Scott, chairman; Lieutenant-Colonel Palmer E. Pierce, representing the army; Rear-Admiral Frank F. Fletcher, representing the navy; Hugh Frayne, B. M. Baruch, for raw materials; Robert S. Brookings, for finished products; and Robert S. Lovett for matters of priority. The three latter, in association with food administrator Hoover, so far as foodstuffs are involved, have been constituted a commission to arrange purchases in accordance with the general policies formulated and approved.

Espionage and Exports. One of the most important measures is the act of June 15, "to punish acts of interference with the foreign relations, the neutrality and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes." This deals with espionage, vessels in United States ports, seizure of arms or other articles intended for export, unlawful exports, disturbance of foreign relations, passports, counterfeiting government seals, search warrants and the use of mails.

By executive order of June 21, the secretary of commerce was vested with the executive administration of the provisions relating to exports; and an exports council was established, composed of the secretaries of state, agriculture and commerce and the food administrator, to formulate policies and make recommendations. Later an advisory board was established; and this was later constituted as an exports administrative board, and on October 12 formed into a war trade board, with Vance McCormick as chairman, and representatives from the departments of state, treasury, agriculture and commerce, the food administration and the shipping board; to issue licenses and carry out the export and import regulations. By proclamation the export of a considerable list of commodities has been prohibited, except under license.

Food and Fuel Regulation. Two important acts of August 10 deal with food supply problems. One provides for gathering authoritative information concerning the food supply, and authorizes educational measures for increasing production, preventing waste and promoting conservation. This act is to be administered by the secretary of agriculture. The other act confers, during the war, wide police powers for encouraging the production, conserving the supply and controlling the distribution of food products and fuel. This authorizes the President to license the importation, manufacture, storage, mining or distribution of any necessaries; to requisition, for the army or navy, foods, fuels, and other supplies, and any factory, packing house, oil pipe line, mine, or other plant; to purchase, store and sell wheat,

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flour, meal, beans and potatoes; to regulate the practices of exchanges or boards of trade; to fix a guaranteed price for wheat; to require producers of coal and coke to sell their products only to the United States, and to fix prices for such commodities. It also prohibits the use of foods, fruits, food materials or feeds in the production of distilled spirits for beverage purposes; prohibits the importation of distilled spirits; and authorizes the President to limit, regulate or prohibit the use of food materials in the production of malt or vinous liquors for beverage purposes.

In carrying out this act the President is authorized to make a reements, to create and use any agency or agencies, to utilize any department or agency of the government, and to coördinate their activities. Under this provision H. C. Hoover has been appointed as food administrator and H. A. Garfield as fuel administrator.

Committee on Public Information. This committee, established by executive order on April 14, consists of the secretaries of state, war and navy and George Creel, chairman, who is charged with the executive direction of its work. It was created to perform the combined functions of censorship and publicity; and has been organized with divisions on external communications, civic and educational coöperation, publicity, visé, foreign correspondence and foreign language publications, pictures and official bulletin. It publishes a daily *Official Bulletin;* and has issued an annotated edition of the President's *War Message and Facts Behind It,* a national service handbook, and a series of shorter pamphlets. All outgoing cables are censored; and newspapers are informed as to matter whose publication is deemed dangerous.

By proclamation of October 12, a censorship board was established, composed of representatives of the secretary of war, the secretary of the navy, the postmaster general, the war trade board and the chairman of the committee on public information. J. A. F.

British War Administration. In the conduct of the present war there have been striking developments and contrasts in the forms and agencies of governmental action by Great Britain, as compared both with peace conditions and with the methods and machinery employed in former wars. In the contest with Spain during the reign of Queen Elizabeth, the management both of the war and the internal administration of the country was exercised chiefly, and almost entirely, by the privy council. There was no parliamentary legislation, except for the levy of new taxes; and there were few specialized administrative

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officials or other agencies of the central government. In later wars parliamentary legislation increased both in amount and importance; and there was also some development of central administrative machinery. In the time of the younger Pitt, parliamentary action reached its maximum; and there was a voluminous and bewildering mass of statutory legislation. There was also a larger use of specialized administrative officials; and the privy council was relatively a much less important factor than either at earlier times or in the present war. At the same time, the active control and direction of the government was in fact exercised by the extra-legal cabinet, under the forceful leadership of Pitt, the prime-minister.

"In the present war both the privy council and parliament played an active part in the conduct of affairs. The subservience of the council to parliament was in theory beyond doubt, but in fact the members of the council exercised a controlling force in the deliberations of parliament, a reversion to the Elizabethan model which was hardly accompanied by the same tenacity of administration or grasp of the essential features of the problem."[1]

"This is an eclectic age, and there is hardly a possible form of legislative activity to which the government of Great Britain had not to resort in order rapidly to create an economic screen between the nation and the war zone and at the same time to carry on the war with efficiency. It was necessary not only to secure success in the field and on the seas, but also to preserve a national life immune from social and economic disturbance. Legislative methods employed were both remarkable and complex."[2]

Acts of parliament have been numerous;—more so than at any time except that of Pitt;—and the legal supremacy of the king in parliament has been formally recognized by securing such legislation for most of the unusual powers, at least in internal affairs. But, besides the actual control exercised by the cabinet in the formulation of statutes, these measures have been for the most part brief and have granted sweeping authority in the broadest terms, leaving to orders in council and departmental regulations much of what a century ago would have been found in the statutes themselves.

Royal proclamations and orders in council have been much greater in number and more important in content than at any previous time,—more even than in the days of Elizabeth. To a large extent these have

[1] *The Times History and Encyclopedia of the War*, VIII, p. 47.
[2] *Ibid.*, p. 49.

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been issued under the express authority of acts of parliament, old and new; but there has also been a significant revival of these forms of action based on the unwritten, prerogative and common law powers of the ancient constitution.

But in addition to this return to the practices of earlier times, there has also been a new and remarkable development of administration through specialized departments, officials and other agencies.

"The progress of the war is affecting deeply our administrative organization. It has imposed new duties on many of the old established departments and has directed their energies on lines which may conduce to the more efficient conduct of the war. The home office, the board of trade, the board of agriculture and fisheries, and even the board of education, have been considerably affected as regards their policy and procedure. Economies have been made on normal services and new functions have to be undertaken to meet requirements which the war has made urgent."[3]

As a result of these new functions there has been a remarkable increase in the volume and importance of departmental regulations and orders; and there have also been important developments in the formation of new governmental agencies. For the first two years of the war, these were for the most part in the form of special committees and commissions. A host of these have been established, for one purpose and another. Many have been of an ephemeral character, for some immediate investigation and report. Others have been more lasting, some only as advisory bodies, but a number have been vested with executive and administrative authority.

The vast expansion in the scope of governmental action has further led to important internal reorganization in some of the older departments, and the creation of new divisions and sections,—not to mention the enormous increase in the number of officials, both central and local, and the staff employed.

In addition to all this, great and novel developments have taken place outside of the older departments of the government. This new stage in the development of war administration was begun by the creation, in 1915, of the war trade department, the ministry of munitions, and the board of control for the liquor traffic. Further steps in the same direction were taken, at the end of 1916, by the establishment of the new ministries of food control, shipping control, pensions, labor,

[3] *Political Quarterly*, No. 7, p. 148 (1916).

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and blockade, and the air board; and to these have been added, in 1917, new departments of national service and reconstruction.

Still more significant has been the change, which has well been called a revolution, in the central organ of control of the British government, the cabinet. Before the war there had been established a cabinet committee on imperial defense, which soon after the beginning of the contest became a war committee. This was reorganized towards the end of 1915 into a smaller war council, for directing the active conduct of the war under the supervision of the cabinet. In the reorganization of the government when Mr. Lloyd George became prime minister, in December, 1916, both the war council and the old cabinet were replaced by a new war cabinet of five members. The composition of this body and its relations to the ministry and to parliament show vital and fundamental differences from the former established conventions of the British constitution.

A further, and perhaps even more important development, took place early in 1917. At the time of a special Imperial War Conference of representatives of the British government and the Dominions and India, there was also held a series of meetings of what was publicly called an imperial war cabinet, comprising the prime minister of the United Kingdom, with the other members of the new war cabinet and the ministers most directly concerned with imperial affairs, and also the prime ministers of most of the self-governing dominions and representatives from India. It was decided to continue this imperial cabinet as a permanent feature of the government of the "Imperial Commonwealth."

Both of the last mentioned and most radical reconstructions of the governmental system—the formation of the war cabinet and the imperial cabinet—have been accomplished, in peculiarly British fashion, by an entirely informal and extra-legal process. No act of parliament has been passed, and no order in council or royal proclamation has been issued, establishing or even announcing the new machinery of government. The existence of the new war cabinet may be ascribed to the decision of Lloyd George, in the process of constituting the new ministry, and the change was accomplished when the new ministers accepted their posts and parliament silently acquiesced in the result, announced in the prime minister's first speech to the house of commons. In the formation of the imperial cabinet, the new body itself decided that it should be a permanent institution; and public announcement was first made, not by or at any legalized governmental

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institution, but at a social function—a dinner to the delegates attending the imperial conference.

Nevertheless, the new institutions are related in fact to one of the oldest parts of the formal machinery of British government. The members of the new war cabinet and the new imperial cabinet are all members of the king's privy council; and these new bodies will thus have the same basis as the old cabinet as an informal committee of the council.

From this outline, it should be recognized that the broad question of the effect of the war on the British machinery of public administration is one that well deserves close study and investigation. Many of the changes may prove but temporary, and after the war a return to older methods and practices may be anticipated. Even these are worthy of attention as important events in one of the most stupendous crises in history. But some of the new arrangements, and among them probably the most fundamental, are likely to leave a permanent impress on the British government, and to form a landmark in the development of its constitution and of political and administrative organization throughout the world. J. A. F.

The Internal Political Situation in Germany. The reaction of the war upon the internal politics of Germany bids fair to be as fundamental and far-reaching as in any country engaged in the struggle, save Russia. The government of Germany was indeed stabilized by the outbreak of the war. The opposition of the Social Democrats, which had been especially active in the immediately antecedent period, was at once quieted, and for the first time in the history of their party they joined in an affirmative vote of the budget. Conservatives, Liberals, Radicals and Clericals also all forgot, not only their differences with one other, but also their differences with the government, and joined heartily in support of the policies of von Bethmann-Hollweg's administration. The war, as it progressed, necessitated a few measures of administrative reorganization, such as the appointment of a food controller, but essentially the government remained unchanged in personnel and character down until the resignation of the chancellor on July 14 of this year. This event was the result of a political crisis of the first magnitude whose full effects are impossible to forecast, but which in all likelihood will mark a radical turning-point in the political history of the German Empire.

Opposition to the government was slow to develop and only reached

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a formidable character in the period following the Russian revolution and the entry of the United States into the war. These events crystallized public opinion in two directions: first, in the willingness to accept a moderate and negotiated peace,—a "peace without annexations or indemnities;" and, second, in the determination to establish an effective control over the government by the introduction of necessary constitutional reforms. These two popular demands were intimately connected. It was the thoroughly intransigeant attitude of the government, controlled as it was by the military leaders supported by all the Pan-Germanist forces in the state, that led to the widespread popular demand for constitutional reform. The Reichstag eventually came to reflect this public sentiment.

The adoption of constitutional reforms which would secure a relationship of responsible subordination on the part of the government to the people's representatives had long been agitated in Germany by the Social Democratic and Radical parties. The most important of these is the abolition of the three-class electoral system in Prussia and the adoption of the principle of universal and equal suffrage for the election of members to the Prussian Landtag. This would immediately result in endowing the Prussian government with a responsible character; and it, in turn, would appoint Prussian members to the Imperial Bundesrath who would recognize their responsibility to the people's representatives. The German Bundesrath is the center of German governmental authority, and the Prussian delegation to this body, controlled as it is by the kaiser, is in a sense the citadel of autocratic power. The basis of the kaiser's complete control over the Prussian delegates is the three-class electoral system in Prussia which gives preponderant power in the Prussian Landtag to the Junker and Conservative elements. The reform of the Prussian electoral system would thus have a most vital effect in democratizing the government of the Empire. In addition to this, a redistribution of seats for the Reichstag was demanded. The arrangement of constituencies has remained unchanged since the founding of the Empire, and the marked trend of population toward the cities has resulted in what might be described as a negative gerrymander to the serious disadvantage of the Socialist and Radical parties whose strength is chiefly found in the urban centers. These two reforms would inevitably result in the establishment in some degree of ministerial responsibility. The direct demand for the recognition of the principle of ministerial responsibility has accompanied the agitation for other reforms.

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As early as March 14, evidently influenced by the revolution in Russia, the Chancellor promised democratic reforms to the Prussian Landtag. Although this promise was modified by his statement to the Reichstag a fortnight later that he was convinced that reforms in the Prussian electoral franchise should not be undertaken while millions of men were in the trenches, this latter body proceeded, on March 30, to establish a committee of twenty-eight members to consider constitutional reforms. The vote of 277 to 33 on this question is indicative of the widespread feeling of dissatisfaction with the existing political system. The debate in the Reichstag on the next day after the adoption of the resolution became so stormy that the government felt it necessary to prorogue it to April 24. Discussion of the subject of constitutional reform nevertheless continued unabated in the press, and on April 7, the kaiser himself admitted its necessity in a formal instruction to the chancellor to "assist in obtaining the fulfillment of the demands of the hour . . . . and shape our political life in order to make room for the free and joyful coöperation of all the members of our people." He is even quoted as saying that "there is no more room in Prussia for elections by the classes," and that "the reform of the Prussian Diet and the liberation of our entire political life are dear to my heart." It was made clear, however, that these reforms were not to be actually inaugurated until after the war. During the short session of the Reichstag from April 24 to May 17, the committee on constitutional reforms discussed proposals for a redistribution of seats and the establishment of a larger measure of control over the government, but no definite action was taken. The movement for the reform of the Prussian electoral system received new impetus on June 30 by the formal pronouncement of a number of leading Conservatives (the party hitherto most unalterably opposed to any change) in favor of an equal franchise with a direct and secret ballot.

The political crisis which led to the fall of von Bethmann-Hollweg was occasioned by an important speech delivered July 6 before the Reichstag main committee by Matthias Erzberger, the leader of the Center (Clerical) party, in which he announced the adherence of his party to the principles of "peace without annexations" and democratic constitutional reform. There was thus constituted a democratic *bloc*, consisting of the Social Democrats, the various Radical groups and the Center, possessing a decisive majority in the Reichstag. A week of the most serious political disquiet ensued, with one

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wild rumor following another. Secret conferences were held between the kaiser, the crown prince, the crown council of Prussia, the imperial ministers and the military leaders. On July 11, an imperial rescript was issued promising a reform in the Prussian electoral system, so that the next elections would be held on the basis of equal suffrage. Three days later the resignations of Dr. von Bethmann-Hollweg, the chancellor; Dr. Zimmerman, the secretary for foreign affairs; and General von Stein, the Prussian minister of war were announced. Dr. Georg Michaelis, who had been Prussian food controller and under secretary of finance, was appointed to the chancellorship.

The influence of the crown prince is supposed to have been decisive in securing the dismissal of von Bethmann-Hollweg, whose tenure of office for eight years had been marked by the most complete confidence of the kaiser. But, though the crown prince may have influenced the decision, the political situation demanded either the sacrifice of the chancellor or a complete and thoroughgoing reversal of policy which would mean a reduction of the influence of the military leaders. The change in the chancellorship must be viewed as an endeavor to stem the tide of popular discontent by making a scape-goat of the chancellor without any intention of altering his policy, which had indeed for some time been determined by the military leaders. Michaelis had little reputation or experience on assuming the highest office in the imperial government. He had indeed served in several subordinate positions and is described as an efficient, middle-class bureaucrat. His bourgeois origin was doubtless relied upon to win him the favor of the people, but his political sentiments and attachments appear to be even more conservative than those of his predecessor and his dependence upon the military leaders even more complete.

The new chancellor's first address to the Reichstag was awaited with much interest. In it he dwelt upon the successes of the submarine campaign, and proclaimed the impregnability of the position which the Empire occupied. He said that Germany would not continue the war for conquests but would welcome an honorable peace, one which would leave Germany's territory inviolable. He promised the appointment to the leading executive positions of men "who possess the confidence of the great parties in the popular representative body," but this must be understood as in no wise to narrow "the constitutional right of the imperial administration to conduct our policy." The speech as a whole was a sufficiently evasive utterance to avoid committing the government on any definite point. The democratic *bloc* on the same day

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voted a resolution, by 214 to 116, expressing the desire of the German people for a peace without forced annexations and with mutual understanding and lasting reconciliations with other nations, but avowing a determination to fight as one man against the Entente's threats of conquest. On the following day the Reichstag adjourned to September 26.

Michaelis is now generally considered as a mere *ad interim* appointee. At first there was some question as to whether he might not take a liberal tack, but it has become already clear that he is little more than a puppet in the hands of the military leaders. It would seem, however, that the issue of responsible government has been squarely set by the Reichstag. A dissolution and an appeal to the country have been suggested as a possible move on the part of the government. But it is scarcely conceivable that such a coup would be successful except on the basis of decisive victories in the field. The German people are heartily tired of the war. They are beginning to realize the impossibility of a real German victory. They want peace, and are likely to return representatives pledged to the policy of a moderate, negotiated peace, which is apparently now attainable only through the complete reorganization of the government on the principle of ministerial responsibility.

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NOTES ON INTERNATIONAL AFFAIRS

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Constructive Peace Proposals. The literature of international politics is becoming more and more marked by serious contributions to the political and economic foundations of a permanent international peace. Many of these contributions are from the pens of practical statesmen as well as university scholars, and by contrast with distinctly pacifist appeals they aim at a practical and scientific study of the underlying problems of world peace. A rough classification of the various proposals would place them in two distinct groups: those dealing with the political basis of international peace, which involves the question of nationalities, the rearrangement of European boundaries, federation versus the complete independence of related groups, international coöperation to secure the welfare of backward states, and a league of nations to give to all the peace and security which is beyond the reach of the individual state; secondly, those dealing with the economic basis of international peace, which involves the question of the freedom of the seas, the abolition of commercial restrictions upon navigable rivers, the unobstructed use of special ports and harbors and of railways leading from inland states to the sea, the problem of preferential tariffs between colonies and the mother country, freedom of opportunity in the development of backward countries, and other questions associated with them. In many cases it is not possible to separate the two groups of political and economic problems of readjustment; for on the one hand the economic issue is frequently found to be the underlying motive of political action, and on the other hand there are cases in which the political issue in its ideal form attempts to run counter to sound economic policy and must be held in restraint by it.

The Problem of Nationalities. Assuming the possibility at the close of the war of a settlement of the complex problem of nationalities along constructive lines, what is to be the standard by which the claims of social groups for recognition as separate state units are to be judged? What constitutes a nation? And when this has been determined the

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further question arises whether it is possible or expedient to give to every group presenting a fair claim to be a nation the actual status as such among the sovereign states. Perhaps one of the best brief discussions of recent date of the elements which taken in their sum total constitute nationality is to be found in the volume by C. D. Burns entitled *The Morality of Nations* (University of London Press, 1915), where are enumerated and weighed the several forces of blood relationship, common language, and common tradition, which implies a common purpose and a common ideal, and which acts with most force when embodied in a distinctive form of religion. In *The Great Settlement* by C. Ernest Fayle (New York, Duffield and Company, 1915) the author tells us that by a nation he means "broadly speaking, a population united by common interests, common sympathies, common traditions, and a common history, and by a consciousness of unity which leads it to desire a common government." Race and language are not specifically mentioned here, but Mr. Fayle thinks that in general the above conditions involve "community of race or at least of speech;" though he finds that in some cases, such as Belgium and Switzerland, men who differ in blood and speech are seen to be united by other ties which create a genuine national sentiment. On the other hand it is possible to have two distinct nations, such as Serbia and Montenegro, which are both of the same race.

In his volume entitled *Some Frontiers of Tomorrow* (New York, The Macmillan Company, 1915), L. W. Lyde similarly makes the claim of nationality depend not so much upon race or language as upon common ideals based upon historic associations and economic interests, resulting in a consciousness of unity. So also C. R. Buxton in his chapter on "Nationality" in the volume *Towards a Lasting Settlement*, while not attempting to define the idea of nationality, refers to the bond of identity of language or religion, as well as the belief of the groups seeking national unity that they "spring from the same stock and have shared from time immemorial in the same sufferings and achievements." Philip M. Brown, in a recent volume entitled *International Realities*, enumerates among the factors constituting the community of interests which determines a state, language, religion, political sympathies, common customs and traditions, and the economic factor of variety of products as well as the geographic factor of boundary lines naturally creating distinct groups.

It is clear that there is no absolute standard by which to judge the claim of a group of people to existence as a separate nation. The

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historical development of races has proceeded as a series of cross-currents rather than as a smooth-flowing stream, and the natural operation of the factors constituting a nation have but too often been thwarted by the ruthlessness of conquest or the deliberate action of international congresses. Unhappily the barriers thus artificially set up have in time struck root in the soil and become a permanent source of difficulty. The colonizing of the northeast corner of Ireland by Scotch immigrants in the time of Cromwell is but one instance of an otherwise simple problem of nationality rendered almost hopelessly complex. So too in the Balkans differences of religion and race, artificially injected into districts possessing distinct nationality, have left a heritage of conflicting interests and sympathies which make it difficult to distinguish the basis for unity along national lines. In Austria-Hungary, where the struggle of separate groups for the recognition of their nationality has reached its most acute and complex form, there are numerous "islands" and "peninsulas" of foreign races breaking in upon the otherwise homogeneous character of the national group, and forming what have been designated as "little Ulsters" in opposition to the desires of the great majority of the province as a whole. Such, for example, is the colony of Magyars isolated in Eastern Transylvania in the midst of a solid Roumanian population on all sides. Such also is the Polish population, which running north from Bromberg to the Baltic Sea divides East Prussia from the remainder of the Empire. In like manner there are large German colonies in Bohemia and Moravia, which make it impossible to leave to the Czechs and Slovaks the complete control of those two provinces.

Rearrangement of Boundary Lines. The ideal settlement of the problem of nationalities is that boundary lines of government should coincide with the just claims of distinct national identity. But in attempting to apply this principle to the actual conditions of Europe a number of modifications must be introduced in order to obtain a practical program. Mr. Fayle points out that "while common nationality may be the essential foundation of a stable and prosperous state, geographical and economic factors cannot be left out of account. To ignore the relation of a coast to its hinterland or to sever districts united by every tie of economic interest may condemn a whole people to impoverishment and decay, in seeking to satisfy the national claims of an insignificant minority;" and in a subsequent chapter he lays stress upon the fact that "it would be a disastrous error to allow an exclusive preoccupation with questions of race and language to result in such a

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redrawing of boundaries as would sever the connection between any great seaport and the districts for which it is the natural outlet." How the economic interests of the groups claiming recognition as separate state units can best be reconciled with their political claims is considered below, in connection with the problem of federation.

In addition to the protection of economic interests it is thought by some writers that military interests must be adequately protected, and Professor Brown offers the statement that "mountains, as a rule, make better boundaries than rivers. The economic and other interests of the people inhabiting a river-valley—the Rhine, for example, are usually so identical as to render a river boundary artificial and obnoxious, a constant source of friction." The idea of boundaries as barriers of separation is given a prominent place in the volume entitled *Political Frontiers and Boundary Making* by Colonel Sir Thomas H. Holdich, in which the author says that "the first and greatest object of a national frontier is to insure peace and good will between contiguous peoples by putting a definite edge to the national political horizon, so as to limit unauthorized expansion and trespass," and his belief is that it is necessary to separate nations "by a barrier as effective as nature and art can make it." In striking contrast is the view of Mr. Lyde who holds that while political frontiers should be national they should at the same time be as far as possible assimilative, that is, the power of a state to assimilate conquered territory in the past should be a consideration in determining whether it should continue to hold such territory, and that frontiers should be as far as possible antidefensive, that is, they should be identified with geographic features, such as navigable rivers, which tend to promote peaceful intercourse. Mr. Leon Dominian, in *The Frontiers of Language and Nationality in Europe,* is inclined to have national boundary lines determined by the language spoken by the majority, on the theory that all races are more or less mixed, while a common language implies as a rule a common culture which can be made the basis of a stable political organization.

Federation with Local Autonomy. Owing to the difficulty of determining with a fair degree of accuracy the just boundaries of national groups, taking into consideration economic needs as well as political aspirations, it has been proposed that the true solution of the problem of nationalities is not the complete independence of the distinct communities, in the cases where they are not seeking to be united to another state, but rather autonomy in matters of local government together with constitutional rights as members of a federal empire. It

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is thought that autonomy in local matters would suffice to meet the fair claims of national groups to the free pursuit of their own ideals of culture in matters of religion, literature, art, festivities, and other forms of self-expression. On the other hand the subordination of these groups as members of a federal empire, provided their position within the empire were protected by a constitution and were based upon the principle of equal rights for all members of the federation, would tend to remove the barriers of suspicion and discord which inevitably rise between rival neighboring communities and to facilitate the friendly intercourse of the states within the federation, and at the same time it would make impossible the creation of competitive tariffs and would put the railways of the several states at the disposal of all. Had the position of Alsace-Lorraine within the German Empire been that of the other members of the federation rather than that of an imperial province, it is probable that much of the disaffection of parts of that territory would have been removed. Had the Czechs possessed local self-government within a federation of the component national groups of Austria-Hungary, the greater part of their claims to national independence would have had no meaning.

In order to satisfy the national claims of the Slavic communities of Austria-Hungary, exclusive of the Czechs of Bohemia, it is proposed, in an article by Sir Thomas Holdich in the *Fortnightly Review*, August, 1917, to form a Jugo-Slav federation, which shall include Serbia, Croatia and Slavonia, Carniola, Dalmatia, Bosnia, and Montenegro. It is manifestly impossible to give to all these separate groups complete independence, even should they desire it, so that their separate existence as autonomous members whether of a reconstructed Austro-Hungarian Empire or of a new Jugo-Slav federation is the best fate that can befall them. The plan has recently received the support of M. Pasitch, minister of foreign affairs of Serbia, and it is ably advocated by H. N. Brailsford in an article in the *Contemporary Review*, August, 1917, in which he thus presents the case of federation as against independence: "Federalism is more than a formula which may spare us a further two years of war. It is, ideally, the better solution. It must break down German hegemony in Central Europe, but without endangering the legitimate enterprise of the German people. It would be the natural preparation for a larger Society of Nations." The same writer in his *League of Nations*, recently published, urges that "the advantage of a federal solution is that it would throw upon the central government and parliament in the first place the duty of watching over the interests of minorities."

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As has been pointed out in the discussion of the problem of nationalities, the boundary lines of nationality can scarcely anywhere be drawn so as not to include within the national group a minority of another race, so that the only possible solution in most cases is to be guided by the wishes of the large majority and then proceed to protect the rights of the minority by constitutional guarantees. The value of these constitutional guarantees will naturally be far more convincing to the minorities if the guarantees are not only part of the constitution of the autonomous state, but are embodied in the constitution of the federation as well. If this were done, "Vienna would see," as Mr. Brailsford says, "that the Czechs did not oppress the Germans in Bohemia, and Budapest would be vigilant for the Magyars in Transylvania." As an example of such constitutional guarantees there are the fourteenth and fifteenth amendments to the Constitution of the United States, which protect the negro in his rights of life, liberty, property and suffrage against encroachment by the local state governments, though there are, of course, special conditions present in the relation of the negro to the white races which make the problem of his protection distinct from that of the subject nationalities of Europe.

Apart from the protection of minorities there is the economic interest of the national group to be considered, and there can be no doubt that this interest would be better cared for under the status of autonomy rather than that of independence. As Mr. Fayle points out "the lot of a small inland State is not always a happy one," and Bohemia would gain enough from having a free access to the markets of Europe and of the world by inclusion in the *Zollverein* of a federation to justify the denial of the pride of complete independence. This aspect of the case is forcibly presented by Mr. Brailsford in his *League of Nations*, where he shows that "it is easy to denounce Austria-Hungary as a 'ramshackle Empire' and to call for its dismemberment, but the more one contemplates the strange fact of the union of these many races in one political unit, the more one is driven to the conclusion that there is a solid and natural reason for their combination. The reason is geographical and economic."

International Coöperation. The question of international coöperation to secure the welfare of backward states, being closely associated with the question of the "open door" and the internationalization of the fields of investment, is an economic as well as a political problem and will be considered in connection with the economic basis of peace. In like manner, although the League of Peace is in respect to its organi-

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zation and powers a political problem, it is so intimately bound up with the economic basis of reconstruction that consideration of the plans for its establishment and of the difficulties which must be overcome before it can be brought into being will be reserved until the economic problems have been discussed.

The Economic Program. *The Freedom of the Seas.* Among the various proposals for the economic reorganization of the world in the interest of permanent peace the principle of the freedom of the seas has been given a prominent place. It had been frequently mentioned in unofficial German discussions of the terms of peace and was referred to in a speech of von Bethmann-Hollweg on November 9, 1916, in which, after pledging Germany's coöperation in peaceful arrangements to prevent war, the chancellor said: "Then the principles of justice and free development, not only on the Continent but also on the seas, must be made valid." But the principle was brought prominently before the public by President Wilson in his address on January 22, 1917, before the senate, in which he laid down the conditions under which he considered it possible that the United States might coöperate with other nations in establishing an international authority to guarantee peace, and stated that "the freedom of the seas is the sine qua non of peace, equality and coöperation;" and again on March 5 the President advocated as one of "the principles of a liberated mankind . . . . that the seas should be equally free and safe for the use of all peoples, under rules set up by common agreement and consent, and that so far as practicable they should be accessible to all upon equal terms."

Considerable speculation has been indulged in as to the precise meaning of the "freedom of the seas;" for the seas have long been free in so far as concerns any direct obstacles to commercial intercourse in time of peace. In the fourth of a series of articles in the *New York Times* "Cosmos" interpreted von Bethmann-Hollweg's declaration as referring to a future war in which the control of the seas by Great Britain would be used, as in this war, "to deprive Germany and her allies of some advantages through trade with neutrals to which they are legally entitled," and that the difficulty would be met chiefly by the exemption of the private property of the enemy from capture at sea. In like manner Mr. Sidebotham, in a chapter on "The Freedom of the Seas" in the volume *Towards a Lasting Settlement,* conceives the freedom of the seas as a principle of war, not of peace, and defines it as meaning

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"the exemption of commerce from the operations of war so long as it does not take part in them."

But it must be remembered that both von Bethmann-Hollweg and President Wilson were contemplating conditions of peace and not seeking to render the lot of future belligerents easier; and on this assumption, which is indeed borne out by the context of both statements, the freedom of the seas may doubtless refer to the exemption of private property at sea from capture, but from the point of view that the capture of enemy merchantmen operates even in time of peace as a club in the hands of the nation whose fleet is larger and which may thereby obtain its will by intimidation without resorting to actual force. In this light the freedom of the seas may also refer to modifications of the rules of contraband and blockade regarded as instruments of prospective injury to weaker nations. In other words the freedom of the seas means the removal from the present law of war of all those elements which operate as a menace in time of peace.

Mr. W. E. Weyl, in his recent volume entitled *American World Policies* (New York, The Macmillan Company, 1917), points out that Germany "requires a foreign base for her industry and uninterrupted access to that foreign base both in war and in peace. She can be throttled, strangled, starved under the present usages of sea war. The war may not be of her own making" (p. 248); and he suggests as the basis of the freedom of the sea, (1) the abolition of the right of capture of merchant ships, (2) the abolition of the commercial blockade, (3) the establishment of international prize courts, (4) the internationalization of straits, and (5) the establishment of an international naval convention (p. 254).

Obviously this cannot be accomplished except as a result of a general agreement among the nations by which the menace of war itself shall be removed. For it is idle to expect the nations which control the seas to lessen the effectiveness of that control unless the nations whose armies are the most powerful on land weaken themselves in some corresponding manner. War has ceased to be a contest between the armed forces of the belligerent states, and so long as the entire industrial resources of a nation are put at the disposal of its fighting forces it cannot be looked for that the nations will forego the right to weaken the enemy by the destruction of his commerce at sea. It was in this light, doubtless, that President Wilson viewed the situation when he said that the freedom of the seas was "a problem closely connected with the limitation of naval armaments and the coöperation of

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the navies of the world in keeping the seas at once free and safe." Or, as Mr. Brailsford puts it, "the idea of a League of Nations provides the solution of a problem which might otherwise seem insoluble" (p. 207), that is, it offers a means by which the full force of the naval power of the league can be brought to bear upon the individual recalcitrant nation in a war for the maintenance of the principles of the league, and in so doing makes more reasonable the demand upon the nations whose chief reliance is upon their navy to forego the extreme use of it upon their own initiative, and at the same time does away with the menace to the commerce of the nations of lesser naval strength.

Economic Rights of Way. For nearly two centuries after the freedom of the high seas had been vindicated against the claims of territorial sovereignty made by Portugal, Spain and England, the great international rivers of Europe and America remained subject to commercial restrictions which hampered the trade of the nations bordering the upper courses of the river but not controlling its mouth, and which put a bar to the trade of other nations with them. The Congress of Vienna, in opening up the Rhine and the Scheldt to the commerce of all nations, prepared the ground for later treaties, and by the close of the nineteenth century free rights of way had been extended by a series of treaties to all the great international rivers of Europe, America and Africa. Our own Hay-Pauncefote treaty marks the application of the principle of free rights of way for all nations through the artificial highway of the Panama Canal.

The next problem which came to the front with the development of railways as means of transporting freight was to obtain some sort of international control over them which would facilitate the passage of through freight from harbors to inland towns across national lines. In 1878 two important international conventions were proposed, one of which regulated the acceptance and transport of goods, making it obligatory upon the parties to provide facilities for through traffic, while the other regulated the technical difficulty of a uniform gauge and standard rolling stock. These conventions were embodied in the general convention adopted in 1890, the result of which was to make it possible for inland states to obtain access to the ports and harbors most convenient to them, and to prevent the use of railways by a maritime state so as to obstruct the commerce of an inland neighbor. A further step, however, remains yet to be taken, namely, to institute an international regulation of freight rates, which will make it impossible

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for a state strategically situated to discriminate against the commerce of its rival. Separate conventions have been entered into by the states providing for fair treatment in the charges for through traffic, but these individual agreements have not given the same sense of security which an international convention would confer, and there still remains the danger that an unexpected change in the rates would injure the trade of the inland state.

A similar problem is presented in the case of ports and harbors. Unreasonable dues imposed by the maritime state upon commerce destined to an inland state or coming from that state to the harbor can seriously impede the commercial and industrial development of the inland state. And not only unreasonable dues, but inadequacy of dock facilities, the lack of proper channels and the maladministration of quarantine regulations may prove equally embarrassing to trade. The policy pursued by Austria of shutting Serbia off from the Adriatic, and thus making Serbia economically dependent upon her, was undoubtedly one of the chief sources of friction between the two countries which gave inspiration and force to the Pan-Slavic movement. If the problem of nationalities be examined from its economic side it will be found that in many cases, as in the conflicting claims made during the second Balkan war, what is on the surface a claim for the annexation of unredeemed national territory is in reality an effort to obtain commercial outlets for national trade under national control.

In his address of January 22, 1917, before the senate President Wilson laid it down as one of the principal conditions of a just and stable peace that in so far as should be practicable "every great people now struggling towards a full development of its resources and of its powers should be assured a direct outlet to the great highways of the sea," and where this cannot be done by cessions of territory the President thinks it could be accomplished by the neutralization of such rights of way under an international guarantee.

The writer of an article in the *New Statesman* of July 28, 1917, thinks that three conditions are necessary if this general principle is to be translated into practice: the guarantee must be a definite and joint guarantee of all the states, or at least of all the great states, with the full sanction of their power behind it; secondly, it will require the close and permanent coöperation of the states concerned, and he suggests that the union of states which adopted the international conventions for the transport of goods by railways be made a permanent organ of the league of nations which is to be the guarantor of world

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peace; thirdly, it will require the creation of machinery through which this coöperation may work, and he suggests a permanent international "rights of way" commission which could watch over the execution of the provisions of the treaty establishing freedom of economic communication, and which could hear and decide cases of alleged discrimination. As an instance of the value of the establishment of international economic rights of way in the solution of the problems of reconstruction the writer refers to the case of Poland. "Polish economic needs," he points out, "stretch far beyond the confines of geographic nationality to the sea at Dantzig and to the industrial regions of Silesia. No solution is possible so long as the German Empire and the new autonomous Poland are to be organized on a basis of international competitive hostility." As an alternative to a division of East and West Prussia giving Poland access to the sea, which is of course out of the question, there is the guarantee under the league of nations of an economic right of way on the Vistula and on the German railways to Dantzig.

It has been pointed out above that in the settlement of boundary lines according to nationalities it is important that a seaport should not be separated from the inland districts for which it is the economic outlet. As this situation is likely to occur in the settlement of boundary lines in the Adriatic and in the Aegean, Mr. Fayle suggests that the best solution in such cases would be the establishment of a free port. "It may either become a little self-governing community or pass under the national flag of its inhabitants, but it must not be shut off, by inclusion in any new tariff zone, from the commerce of the hinterland."

The Open Door. There is little doubt but that the problem of the "open door" will be one of the most difficult with which the nations will have to contend in an attempt to work out a constructive plan of international reorganization. Free access to the markets of the world, whether as the purchaser of raw materials or as the vendor of manufactured products, and equal opportunities for the investment of capital in undeveloped countries is the natural demand of the modern industrial state; it is the economic interpretation of the desire of Germany for "a place in the sun." That the competition of the nations for the control of the foreign markets of the world, particularly of those parts which were susceptible of more or less exclusive control, was one of the underlying causes of the war is admitted by all. Egypt, Central Africa, Morocco, Persia, Tripoli and China

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have been in turn the center of diplomatic conflict because of their strategic economic position as areas of foreign trade and opportunities for the investment of foreign capital.

Economists have traced for us the growth of modern industrialism and the new problem it has created of finding opportunities for the investment of the surplus capital which has resulted from the mechanical inventions that have multiplied the productiveness of labor. In consequence the character of the colonial exploitation of former times has in most cases changed from that of exclusive trade control to exclusive control of the field for the investment of capital. Even where there are no discriminatory restrictions imposed upon the trade of other nations by the power controlling the colony or protectorate, the opportunities for investment are not open to all. Mr. Weyl, in *American World Policies*, points out that "to the citizens of the home country go also the investment opportunities, the chances to secure concessions for mines, railways and tramways. The legal right to these lucrative monopolies inheres in the nation that develops the backward country. This preferred position, this assured possession of a sole and undivided privilege is of the essence of imperialism."

In consequence of the jealousy which must inevitably be felt by the nations excluded from the profitable export of capital, proposals have been made for some form of internationalization of the fields of investment in the still undeveloped countries of the world. In a recent volume entitled *The New Protectionism* Mr. J. A. Hobson argues in favor of a constructive policy which will secure "economic liberty and equality not for trade alone, but for the capital, the enterprise, and the labor, which are required to do the work of development in all the backward countries of the earth" (p. 121); but this equality of economic opportunity, he thinks, must not be the negative one of *laissez faire*, but must be carried out according to a "settled policy of international arrangement for securing, if possible, that this commercial and developmental work shall in the future be conducted on a basis of pacific coöperation between the business groups in the respective countries under the joint control of their governments." (p. 127–8). In an earlier discussion of "The Open Door," in the volume *Towards a Lasting Settlement*, the same writer contends that "if the governments of all civilized nations would consent to give equal rights of commerce and equal facilities of investment and developmental work in their colonies and protectorates to members of all nations, this single agreement would go farther to secure a peaceful future for the world than any

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other measure, such as reduction of armaments, general arbitration, or guarantees of national integrity."

The difficulty is of course to find a basis upon which the internationalization of colonies and protectorates could be constructed. Mr. W. Lippman, in *The Stakes of Diplomacy* (New York, H. Holt and Company, 1915), suggests the establishment of a kind of international senate which, continuing the tradition of the European conferences of 1885 at Berlin and 1906 at Algeciras, might watch over the execution of the law enacted by the conference and hear complaints of maladministration; moreover that in the special areas of friction, such as Morocco, international control should take the form of "a local international government, with power to legislate and to hold administrative officials accountable" (pp. 133, 155). Mr. Brailsford, in an article in the *New Republic*, May 8, 1915, proposes a more elaborate international syndicate of all the companies and persons seeking concessions in undeveloped countries, which would permit the participation of capital from every country upon equal terms in the building of railroads, and the working of mines and oil wells. The plan is discussed with special reference to China in the same writer's *League of Nations*, where he suggests that it might be possible to create for such syndicates "an international legal status—to invent the conception of an international legal personality—so that they might sue or be sued before the Court of The Hague."

Mr. Weyl, after discussing the above-mentioned proposals, is inclined to favor that of Mr. Brailsford and thinks that it has "the advantage of making once and for all a fixed and certain distribution of all eventual profits and thus effecting a real community of interest among the promoters and investors of all nations." Mr. Hobson, in *The New Protectionism*, advocates "the establishment of International Commissions to secure equality of treatment for the commerce, investments and other property interests, of the subjects of the treaty Powers, in all backward or undeveloped countries not under the political control of any Power."

Preferential Tariffs. In addition to the internationalization of the fields of investment it is further proposed by many writers as part of a general policy of equal economic opportunity for all nations in the markets of the world that preferential colonial tariffs be abolished. Great Britain has in the past pursued the liberal policy not only of attempting no control over the tariffs of her self-governing colonies, but of throwing open the doors of her crown colonies to the com-

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merce of all nations. It is true that there will always be a natural tendency for colonies such as India to trade by preference with the empire of which they form an integral part, so that for the year 1913–1914 two-thirds of her imports came from the United Kingdom; but this exclusiveness is voluntary, not legal. On the other hand the British self-governing colonies have been free to favor the mother country with special tariff reductions. In Algeria and Tunis France has fostered her trade by preferential tariffs both upon exports from the mother country to the colonies and upon exports from the colonies to the mother country. In like manner Portugal, Spain and the United States have controlled the tariff policies of their colonies in their own special interest.

With respect to the difficulties in the way of the establishment of the open door in colonial commerce, Mr. Weyl thinks that while it may not be impossible to do away with the local discriminations which hamper commerce where it is legally free, the nations are not yet ready to make the sacrifices which will give their rivals an equal opportunity in markets now regarded as a source of profit to the nation in control (op. cit., p. 268). It is generally agreed that the times are not ripe for the adoption of a general policy of universal free trade. Even Mr. Hobson, who, following the tradition of Cobden and Bright, enters a strong plea in favor of the continuance by Great Britain of its policy of free trade, believes that other nations, including the British self-governing colonies, must be left free to retain protective tariffs for their home markets; but he proposes that all nations be precluded from extending the area of protection to colonies, protectorates, and spheres of interest.

Mr. A. Greenwood, in a chapter in *International Relations* (London, The Macmillan Company, 1916), regards universal free trade as "the greatest step towards the realization of peace," but realizes that "national fiscal policies are so bound up with tariffs that the day of free trade has not yet dawned" (p. 104). Mr. Brailsford takes it for granted "that no European Power is prepared to give up its sovereign power of devising tariffs for its own home market," but he thinks it feasible that the members of the league of nations should not discriminate against one another from any motive of political hostility, and that Great Britain might renounce the preferences accorded to it by its self-governing colonies in return for the absence of future preferential treatment between Germany and Austria. With respect to colonial free trade in general he urges that "apart from the fact that

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all experience proves that colonies do not thrive under a system of monopoly, it is clear that only by allowing to all comers a general use of the advantages of colonial trade can the Powers which chanced, by the good fortune of past history or the use of their greater sea-power, to acquire great colonial estates, protect themselves against the inevitable jealousy of others."

The desire to remove all causes of international friction for the future has led a number of writers to protest against the recommendations put forth at the Economic Conference of the Allies held at Paris in June, 1916. The protest is directed against the measures recommended to be taken after the war, chiefly those more permanent measures by which the Allies propose to render themselves "independent of the enemy countries in so far as regards the raw materials and manufactured articles essential to the normal development of their economic activities." Mr. Hobson in *The New Protectionism* argues against the economic boycott of the Entente Powers on the ground that "by breaking Europe into two nominally independent but really hostile and competing economic systems, it would foster conflicts in all parts of the world, maintain and feed the bitter memories of this war, stimulate the maintenance and growth of armaments, and render another war inevitable" (Preface, p. xvi). Mr. Brailsford in his chapter in *Towards a Lasting Settlement* is equally condemnatory. "Apart from economic objections," he says, "no plan would so surely perpetuate hate" (p. 175, note). The proposals of the Allies do not, it is true, aim at a direct restriction of the trade of Germany, but the incidental restrictions resulting from them would certainly lend weight to the belief in Germany that the present war was entered upon by Great Britain for the destruction of German trade. It is not yet clear whether the defensive plans of the Paris conference were in the mind of President Wilson when, in his reply to the peace proposals of Pope Benedict, he declared that "the establishment of selfish and exclusive economic leagues we deem inexpedient and in the end worse than futile, no proper basis for a peace of any kind, least of all for an enduring peace."

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BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

Distributive Justice. The Right and Wrong of Our Present Distribution of Wealth. By JOHN A. RYAN, D.D. (New York: The Macmillan Company. 1916. Pp. xviii, 442.)

This is one of the most important books that have appeared within the last decade. Many thoughtful Americans, already well acquainted with the socio-political theories and programs of Socialists, of Single-Taxers, of Syndicalists, and of Classical Economists, have been ignorant of the tendencies of Catholic social politics, which, rooted in the moral theology of the middle ages and nourished by the economic developments of the nineteenth and twentieth centuries, have grown to present dimensions of great magnitude. A history of modern Catholic social politics would include reference not only to the famous encyclical of Leo XIII *On the Condition of the Workingmen*, but also to the labors of Ozanam and Lamennais, of Bishop von Ketteler and Cardinal Manning, of Hitze and Lueger, of the Count de Mun and Georges Goyau, and likewise of such organizations as the Clerical parties in Austria, Germany, Belgium, Italy, and Spain, and the *Action libérale populaire* and the *Cercle des ouvriers catholiques* in France.

Dr. Ryan's book is not a history of Catholic social politics—such a work is still to be written. Rather, it is a painstaking critique of the morality of private land-ownership and rent, of private capital and interest, of profits and wages; and its significance lies in the fact that the morality in question is the moral teaching of the Roman Catholic Church and that the thoughtful American who reads it has no longer any excuse for being ignorant of the meaning of Catholic social politics. In a word, it is a well reasoned application of the principles of Pope Leo's celebrated encyclical to the practical economic and political problems which confront the United States and every other nation in a like stage of industrial development.

A book may be temporarily valuable merely because it is timely, informing, and somewhat novel. It cannot be a masterpiece unless,

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in addition to these qualities, it has logical and literary excellence. Dr. Ryan in *Distributive Justice* is a master of clarity, precision, and sanity. Primarily an economist, he writes not in the jargon of the professional but so simply as to be immediately apprehended by laymen. Rent, for example, he defines as "what men are willing to pay for the use of land" or "what land is worth for use." A priest of the Catholic Church, he is never narrowly theological, or controversial, nor does he obtrude his religious predilections into irrelevant political or social speculations. A university professor, he is always interpreting his economic doctrine in the light of a broad socio-industrial organization, and the touchstone of every theory and institution examined by him is "human welfare."

By many Socialists Dr. Ryan's book will be deemed conservative, if not downright reactionary. The man who debated with Morris Hillquit on "Socialism: Promise or Menace" has discovered no reason for weakening the condemnation expressed on that occasion. He now insists that "private land ownership is a natural right because in present conditions the institution is necessary for individual and social welfare" (p. 66), and that "a Socialist organization of industry would make all sections of the population, including the wage earning class, worse off than they are in the existing industrial order" (p. 170).

But attacks on Socialism are only incidental to the elaboration of a really constructive program. And here it is that Individualists of the Manchester School and political philosophers of the type of Herbert Spencer will denounce Dr. Ryan as a radical, even as a revolutionary. Thus, on the land problem, while he thinks that the history of land tenure points on the whole to the conclusion that private ownership is socially and individually preferable to agrarian communism, nevertheless he maintains "that it should be strictly limited in the interest of the non-owners and of the community as a whole" (p. 18). Though he considers the proposals of Henry George rather impracticable, he concludes that papal utterances do not contain an explicit condemnation of the Single Tax system. In the existing system of land tenure he recognizes real defects and abuses, notably monopoly, excessive gains, and unjust exclusion of large numbers from the land; and his remedies are far-reaching: "Exceptionally valuable lands, as those containing timber, minerals, oil, gas, phosphate, and water power, which are still under public ownership, should remain there. Through a judicious system of loans, deserving and efficient persons should be assisted to get possession of some land. Municipalities should lease

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rather than sell their lands, and should strive to increase their holdings. To take all the future increases in the value of land would be morally lawful, provided that compensation were given to owners who thereby suffered positive losses of interest and principal. To take a small part of the increase, and to transfer very gradually the taxes on improvements and on personal property to land, would probably be just, owing to the beneficial effects upon public welfare. A supertax on large holdings of exceptionally valuable and scarce land would likewise be beneficial and legitimate" (p. 133). Small holdings and coöperation become the chief goals of Catholic land reform.

In the whole capitalistic organization of society, grave abuses are discovered and radical remedies are championed. "The receivers of exceptionally large profits are bound in equity to share them with those persons who have coöperated in producing and providing them, namely, wage earners and consumers" (p. 256). The wealthy are under moral obligation to distribute their superfluous goods; and the state may morally employ taxation for the purpose of effecting a more equitable distribution of wealth. "If the public welfare can be promoted by certain social changes, and if these in turn can be effected through taxation, this use of the taxing power will be quite as normal and legitimate as though it were employed for the upkeep of the government" (pp. 101–102). Progressive income and inheritance taxes are specifically advocated. Coöperative enterprise is constantly stressed: it is not only of primary importance in agriculture but also "the most effective means of lessening the volume of interest and bringing about a wider distribution of capital" (p. 214).

Against the much-vaunted Individualist doctrine of "freedom of contract," Dr. Ryan directs a sharpened shaft. "No matter by whom it is or has been held, the rule of free contract is unjust. . . . . When a labourer is compelled by dire necessity to accept a wage that is insufficient for a decent livelihood, his consent is free only in a limited and relative way. It is what the moralists call *voluntarium imperfectum*. It is vitiated to a substantial extent by the element of fear, by the apprehension of a cruelly evil alternative. The labourer does not agree to this wage because he prefers it to any other, but merely because he prefers it to unemployment, hunger, and starvation. The agreement to which he submits in these circumstances is no more free than the contract by which the helpless wayfarer gives up his purse to escape the pistol of the robber" (p. 329).

Every workingman, according to Dr. Ryan, is entitled to a certain

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minimum of goods "by reason of his inherent right of access to the earth. He has a right to at least a decent livelihood," the elements of which are described as: "food, clothing, and housing sufficient in quantity and quality to maintain the worker in normal health, in elementary comfort, and in an environment suitable to the protection of morality and religion; sufficient provision for the future to bring elementary contentment, and security against sickness, accident, and invalidity; and sufficient opportunities of recreation, social intercourse, education, and church-membership to conserve health and strength, and to render possible in some degree the exercise of the higher faculties" (p. 361). Married men are also entitled to "a family livelihood." As means of bettering the economic lot of the working classes, Dr. Ryan advocates minimum-wage laws and elaborate vocational and industrial education, and maintains that "the State should make provision for cheap housing, and for insurance against accidents, sickness, invalidity, old age, and unemployment" (p. 416). "Ultimately," he says, "the workers must become not merely wage earners but capitalists" (p. 425). Through profit-sharing, coöperative production, and coöperative distribution, the workers are pointed toward the path not of Socialism but of Syndicalism. With the latter, Catholic social politics may effect at least a working alliance.

There are minor points in Dr. Ryan's interesting book with which his friends might take issue, but in the main friends and antagonists alike will admire its sanity and tolerance. It is seldom dogmatic, and its spirit is well expressed in such a passage as the following: "The elements of our economic life, and the capacities of human nature, are too varied and too complex to be forced with advantage into any one system, whether capitalism, Socialism, or coöperation. Any single system or form of socio-economic organization would prove an intolerable obstacle to individual opportunity and social progress. Multiplicity and variety in social and industrial orders are required for an effective range of choices, and an adequate scope for human effort . . . . And this, when all is said, remains the supreme end of a just and efficient socio-industrial organization" (pp. 232–3).

The most distinctively religious note in the whole work is sounded at the very close. As an appropriate climax to a most noteworthy study, it should not be ignored by sincere students of social politics. "Neither just distribution, nor increased production, nor both combined, will insure a stable and satisfactory social order without a considerable change in human hearts and ideals. The rich must cease to

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put their faith in material things, and rise to a simpler and saner plane of living; the middle classes and the poor must give up their envy and snobbish imitation of the false and degrading standards of the opulent classes; and all must learn the elementary lesson that the path to achievements worth while leads through the field of hard and honest labour, not of lucky 'deals' or gouging of the neighbour, and that the only life worth living is that in which one's cherished wants are few, simple, and noble. For the adoption and pursuit of these ideals the most necessary requisite is a revival of genuine religion" (pp. 432–3).

CARLTON J. H. HAYES.

Columbia University.

An Introduction to Social Psychology. By CHARLES A. ELLWOOD. (New York: D. Appleton and Company. 1917.)

Social Diagnosis. By MARY E. RICHMOND. (New York: Russell Sage Foundation. 1917.)

Criminal Sociology. By ENRICO FERRI, translated by Joseph I. Kelly and John Lisle. (Boston: Little, Brown and Company. 1917.)

It is seldom that three books of more interest to the student of applied sociology have appeared within the same year than those which are noticed here. The most general in its nature, and the one which will perhaps make an appeal to the largest number of readers, is *An Introduction to Social Psychology.* In this book Professor Ellwood makes a study of the forces which hold society together, which control its growth and lead to change. The three main divisions of the book are, therefore, the nature of social unity, the nature of social continuity and social change. This last section is sub-divided into social change under normal conditions and under abnormal conditions.

In accounting for the forces which control society, the author does not overlook either environment or heredity, instinct or habit, but lays particular weight upon the rôle of the intellect. He feels that as society advances, intellect will play an increasing part in controlling group action. Under normal conditions, the influence of the intellect will predominate, but under abnormal conditions, where a change comes through revolution, the emotional forces are likely to gain the ascendancy and the sane judgment of the wisest leaders is likely to

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be overlooked. In a study of the forces which unite society, Professor Ellwood has not overlooked consciousness of kind, or imitation, or sympathy, or any of the factors which have been put forward by certain writers as alone able to account for the cohesion of social groups. In his system he has made a niche into which each one of these forces finds its place. It is this broad-minded treatment of the subject which makes this volume so well fitted for the needs of the student in the social sciences who wishes a broad outlook upon this field.

In *Social Diagnosis* we have the most complete study which has yet appeared upon the steps which should be taken by the social investigator in gathering and testing material. The book begins quite logically by a study of evidence and inference. Then follow the various steps to be taken in forming a diagnosis. As is natural, attention is first directed to the first interview with the applicant for relief. Then comes a study of the relative value of the additional sources of information and the order in which they should be consulted in most cases. These include the family group of the applicant, the relatives, physicians, schools, employers, documentary sources, other social agencies, and the use of letters, telephone messages, etc. In discussing each one of these sources, the author states the case for and against the reliability of evidence from this source. Then comes a study of what we can expect to learn from each one of these sources, followed by a study of the best way of getting the information desired. The volume is given added value from the fact that the writer has been not only a keen student of the subject, but has had years of actual experience in case work behind her. In addition to this a large number of organizations have coöperated in furnishing records which have been carefully studied to furnish statistical material for the volume.

The amount of investigation required to make a proper diagnosis, according to this volume, is quite appalling. The author recognizes this and admits that the average social worker is too busy during times of stress, and perhaps during ordinary times, to investigate as carefully as these directions would require. She holds however, and rightly, that even in a busy year it is well, now and then, to make a full and complete investigation of a few selected cases. To investigate as carefully as this volume would direct would be indeed to hitch your wagon to a star. Some workers would be spurred to greater efforts from reading this book. Others, and particularly beginners, might throw up their hands in despair. There is no case worker who could not be helped from the reading of this book. He will realize how far he still

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has to travel. If he should try to put into practice the message of this book he might not hit the bull's eye, but he would probably come nearer the mark than he has in his case work before.

The American Institute of Criminal Law and Criminology has placed the English reading public under a deep debt of gratitude by publishing the Modern Criminal Science Series. *Criminal Sociology* is the ninth volume which has been translated and published by this association. The volume originally appeared in 1884, while the present translation is made from the French edition of 1905. Professor Ferri contends that punishment should be individualized and that attention should be directed to the criminal rather than to the crime. In this he stands as the representative of the positive school of criminology and in opposition to the classical school. There was, of course, some excuse for the contentions of the classical school that inhuman punishment should be done away with and a certain fixed punishment should be meted out for each crime. We now realize that each criminal should be studied in the light of his heredity, his environment and the peculiar conditions accompanying the crime. If this is accepted as the modern penology, then Professor Ferri must be given credit for his valuable contribution to it. This volume gives one of the best pictures of the changes through which criminal sociology has past in the last half century. Few would grant the same importance as the author to the anthropological factors. Most would be inclined to give more weight to the social factors.

WM. B. BAILEY.

Yale University.

Community: A Sociological Study. By R. M. MACIVER. (London: Macmillan and Company, Ltd. 1917. Pp. xvi, 437.)

A former critic of sociology, now happily converted (p. viii), recants through the publication of his confession of faith, which embodies one of the more serious and, it should be added, more able attempts to establish certain fundamental laws of the organization and development of society. His is certainly not the conventional work in sociology or social psychology. His conception of psychology is of the introspective rather than the behaviorist type (p. 58), and his approach to sociology is from the standpoint of philosophy rather than from that of science. His starting point is a discussion of the nature of social fact and social law in general and on the basis of these principles he sets forth the major facts of "community" and the laws which are

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embodied in society. The analysis of the nature of "community" (Part II) is one of the keenest and clearest which has yet been done, though it is not always completely original. Upon this analysis he bases his three laws of communal development, which to him express the fundamental facts of social organization and evolution. The first of these laws, setting forth the complementary nature of the development of the individual and society, is not essentially different from the work of Baldwin, Cooley and others, but his applications of it to the problems of the coördination of community and the unity of the individual life contain much that is new and extremely suggestive.

It is in the applications of this law to the problem of the criterion of choice of conduct that the author's most serious slip occurs, for here he seems to accept a subjective test of right and wrong. "The final guide in morals, where there is dispute, must be in the conscience of each, the sense which each man owns of right and wrong, of values" (p. 306), while "the customary and national sanctions of morality progressively diminish," as do all external sanctions (pp. 299, 300). In adopting this criterion for determining conduct he seems to neglect two essential facts: (1) that conscience itself for the average man is mainly the product of irrational external controls (customs, traditions, prejudices of all sorts) and is therefore no more dependable than the external controls themselves, and (2) that the individual is not able to form an intelligent and well-considered judgment on all problems which confront him. In practice there has always been necessarily an appeal from the individual judgment (conscience) to an external control—formerly to custom, to revelation and to trial-and-error-made-law, and latterly to scientifically tested fact, as a basis for social control. Not in an appeal to the individual conscience, therefore, but to an ever growing fund of science is the hope of the future, and it is not even to be expected that the average individual will be able to embody in consciousness all or even most of this science, though it is desirable that he should assimilate as much of it as is possible. He always has had to depend upon external institutions for guidance and with the growing complexity of life and greater specialization of knowledge he will have to depend even more upon such guidance. The individual function of judgment will probably grow more in the direction of selecting and evaluating these guiding institutions and agencies than in withdrawing from their determination into his individual conscience each concrete problem of conduct. The author's characterization of the state as the general coördinating and adjusting organ of society

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(pp. 130, 250) would seem to imply this very fact. But nowhere does he recognize the function of science as a sanction for conduct. It is in this matter of sanctions that he is most under the influence of a subjective metaphysics and least cognizant of the methods of science as applied to social control. In other matters, especially in working out his other two leading laws—the correlation of socialization and communal economy, and the correlation of socialization and the control of environment—he makes constant applications of the findings of science. This dualism of metaphysics and science in the theory of sociology is not peculiar to Professor Maciver alone, however.

Traces of vitalism and also of subjectivism are to be found in such ambiguous expressions as "impulse of life towards fulfilment" (p. 363), the "spirit of life" (p. 366), and "the native force of the human spirit" (p. 368), which he uses as self-explanatory and definite terms. He assumes a self-activity rather than an environmental or mechanistic philosophy of society (p. 367), though he does not ignore the influence of environment. He apparently has been much impressed by Durkheim's theory of the division of labor as a social determiner (pp. 345, 346). In considerable measure he seems to adopt the view that acquired characters are inherited (p. 370). In spite of his own partial leanings toward subjectivism he exposes very neatly the various "back to nature" cults (p. 406). He insists also that the sociologist must have an ethical interest in society (p. 57).

L. L. BERNARD.

University of Missouri.

A Political History of Japan during the Meija Era, 1867–1912. By W. W. MCLAREN, PH.D. (New York: Charles Scribner's Sons. 1916.)

Sufficiently perplexing before, the problem of discovering what are the objects and why the changes in the personnel of Japan's government has become increasingly difficult since Prince Katsura, "army man" and bureaucrat, took the premiership in 1912. Katsura was promptly howled out of office. He was succeeded by a "navy man." Admiral Yamamoto in turn went down before a storm of popular opposition. Count Okuma was then summoned and took office as the representative of professedly liberal policies. His government entered the war against Germany and embarked upon a program of new aggressions against China,—yet it was condemned on the score of insufficiently active foreign policy.

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Field Marshal Terauchi was recalled from Korea and made premier. The army was again in power; the country did not appear satisfied; and there was apprehension abroad. No sooner had the Diet met than the recalcitrancy of the lower house, which has apparently become chronic, demonstrated that the administration would have no popularity with that body. Now, after having defied the Diet, the Terauchi government has won the appearance of support in a new election—the third in five years.

What are the political tendencies in Japan? What are the possibilities in the fields of political alignment and constitutional development? What is the objective of Japanese foreign policy?

Six years ago we were given Dr. Uyehara's authoritative work on *The Political Development of Japan, 1867–1909*. Dr. McLaren has brought the account much more nearly down to date and his book deals more extensively with questions of foreign policy and their relation to domestic developments. He has achieved what he declares in the preface he had set out to do: ". . . . I have endeavored to supply the information which is essential to the formation of accurate judgments as to the meaning of Japanese policy by reviewing her modern political history, describing her system of government, and explaining her national ambition. . . . . In Part I . . . . I have presented a careful survey of the evolution of the existing political institutions of Japan and an enumeration of the powers exercised by the various authorities. . . . .

"In Part II, I have followed the history of the Japanese Diet. . . . . The political policies, their internal dissensions . . . . their struggles with the various oligarchic Cabinets have occupied a large part of my space, as have also the rise and growth of the military faction in the oligarchy. Why the brilliant exploits of arms have synchronized with the decline in the popular interest in domestic politics and the demoralization of the party politicians I have likewise attempted to explain."

Having been for many years professor of politics in Keiogijuki, Dr. McLaren has brought to his task the authority of special equipment and intimate knowledge. Well disposed toward the people of whose institutions and policies he writes, he shows himself neither blinded to their faults nor indifferent to their virtues.

He has been especially successful in explaining the interaction between the facts of domestic and of foreign policy. He considers Ito's constitution, based on "a study of the mediaeval institutions of Tudor

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England and Hohenzollern Prussia," a failure. Ito himself, he declares, "will go down in Japan's history as a man of distinctly second rate ability," who "will be damned by the constitution of 1889 as well as by his action in 1894 in distracting the attention of the nation from the problems of political progress by bringing on the war with China."

Dr. McLaren shows how little opportunity the advocates of popular government have had really to influence political development. The government is at the disposal of the Genro. The Genro represents the Sat-Cho oligarchy. Cabinets are responsible upward only. "The Diet's place in the political system is an impossible one. It is divided against itself; the two houses are mutually antagonistic and fail to accomplish any positive result; their powers of consent only serve the purposes of obstruction and provide an excuse for corruption and manipulation by the Cabinet, which in turn suffers from its subservience to the will of the Elder Statesmen." "Two remedies alone seem to be adequate to cure the 'diseases of government proceeding from multiform centers,' either to abolish at once and for all the constitution and the Diet and revert to a system of absolute and autocratic monarchy, or to amend the constitution in the sense of placing the center of affairs in the hands of a Cabinet responsible to the dominant party or combination of parties in the Lower House."

The strength of the military oligarchy is explained by "the inherent chauvinism of the Japanese people." The weakness of the political parties is ascribed to their "lack of substantive powers" and to "the venality of the politicians and the electorate."

Japanese foreign policy Dr. McLaren considers constantly aggressive. He shows how expansionist sentiments were voiced before 1873 and how militarism was revived by the Chino-Japanese war. The actual expansion since 1894, he considers "a harvest of militarism." "Japanese predominance in eastern Asia has become the foundation of national policy."

Dr. McLaren has not altogether avoided the monotony which is apt to characterize a chronicle of constitution-building, party making, elections and parliamentary sessions. There are points at which the reader would like to have more frequent reference to documentary evidence or other sources. The chapter headings are in several cases not illuminating. The author manifests a fondness for the split infinitive which is sometimes welcome and effective, but at times decidedly otherwise. Whoever made the index did both the author and the reader a disservice.

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These are on the whole minor faults. The narrative is well wrought, the analysis of facts and presentation of conclusions is incisive. This book is a distinctly valuable contribution.

STANLEY K. HORNBECK.

Japan in World Politics. By K. K. KAWAKAMI. (New York: The Macmillan Company. 1917.)

This is a discussion, in the main, of two topics; first, the Japanese question in America, second, the Japanese question in China. About equal space is devoted to the two subjects. The Americo-Japanese problem has three phases,—the immigration of Japanese laborers into the United States, the anti-Japanese agitation in the Pacific coast states, and the conflict of American and Japanese interests in China. Of these three only the second is likely to cause a break in the existing friendly relations of the two powers, for Japan would not fight for the right of free immigration any more than the United States would for her commercial interests in China. An extension of the privilege of naturalization to Japanese residing in the United States would remove the real menace of the Japanese problem. The origin of the Japanese question in China the author finds in the "instinct of self-preservation" as it exists in his nation. China has long been the prey of the western nations, spheres of influence have been set up by the British, French, and Russians, territory has been seized by the same powers, and concessions for railways, mines, fisheries, etc., have been wrested from the middle kingdom. Japan alone of all the powers has fought for the "open door" and the "integrity of China" and she has done so as a measure of self-preservation.

The logic of this explanation of Japan's Chinese policy, as well as of much else in the book, has a decided Teutonic flavor, but in spite of that defect and of the general tone of hostility toward the powers interested in China, especially Great Britain, this book is worthy of one of Japan's cleverest propagandists operating in the American field.

W. W. MCLAREN.

Williams College.

International Conventions and Third States. By RONALD F. ROXBURGH. (New York: Longmans, Green and Company. 1917. Pp. xvi, 199.)

The anarchy of the world war has impressed upon the general public a fact hitherto appreciated only by students of international law, that

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a large part of the field of international relations remains uncovered by any definite rules of law. For it was a common fault of the past, and one not altogether absent from the works of jurists, to speak of a law where there was no law but only a moral obligation, to regard an agreement between two or more of the great powers as being of international force, and to accept the declarations of international conferences as having absolute rather than qualified value, as being permanent sources of law rather than occasional expressions of international aspirations. In consequence whatever contributes to the elucidation of the actual rules of international conduct, or, where these are lacking, whatever contributes to the formulation of a rational code of conduct based upon the legal experience of the several states, is of value in the solution of the now pressing problem of the reorganization of law and order between the nations.

The present volume is the second of a series dealing with international law and diplomacy prepared under the editorship of Dr. Oppenheim of Cambridge University. Its object is to present a study of the legal position of third states with respect to international conventions which directly or indirectly affect them, but to which they are not a party. Owing to the uncertainty of the practice of nations in the matter the author has thought it wise to precede his study of the facts by a consideration of third parties and contracts in municipal law, together with a summary of the opinions of publicists; he is then enabled to determine what is the value of the precedents of diplomatic practice as possibly establishing a general rule of international law. After the chapters dealing with the more immediate aspects of his subject the author discusses in chapter VI the development of conventional into customary law, by which treaties between a few of the great powers have, without being explicitly adhered to by other states, gradually won their way to international acceptance in the form of custom embodying the implicit consent of the nations at large. In this way the rules of diplomatic precedence established at the congresses of Vienna and Aix-la-Chapelle have developed from an agreement between several states into the customary practice of the world.

It must be confessed that the author's treatment of his subject is somewhat sketchy and not at all points conclusive. Fuller discussion might have been given to the subject of treaties incidentally injurious to third states, which is indeed ruled out by the author's description of his subject (§1), but which he introduces as it were accidentally, and which is quite as important a way in which treaties may affect

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third states as is the bestowal of rights or the imposition of obligations. Rules are offered for the distinction between incidental injury and the violation of the legal rights of third states, but too few precedents from international relations are presented to show how far the rules have a practical value. The question of the accession or adhesion of third parties to a treaty concluded between two or more others is, in that such accession constitutes a new treaty, sufficiently distinct from the general question of "treaties beneficial to third states" to have escaped being treated under that chapter heading. It might perhaps have been a better arrangement to have made the study of municipal law follow rather than precede the precedents of diplomatic practice; so that the value of the municipal law as a basis of constructive reform might have been more readily grasped. But these are minor points and they do not prevent us from agreeing with the learned editor that the author has "brought together a considerable amount of material, and that he has come to very valuable conclusions which require thorough examination and consideration." Students will look forward with renewed interest to the volumes yet to appear in the series.

C. G. Fenwick.

Bryn Mawr College.

A Guide to Diplomatic Practice. By the Rt. Hon. Sir Ernest Satow, G.C.M.G., LL.D., D.C.L. Two volumes. (London: Longmans, Green and Company. 1917. Pp. xxii, 407; ix, 405.)

This work, the first systematic treatise of its kind in the English language, deals with the mechanics of international relations. Its best known prototype in a continental tongue is *Le Guide Diplomatique* of Charles Martens, the latest edition of which was brought out by Geffcken in 1866. Such a work is of use primarily to those who are charged with the actual conduct of international affairs either in foreign offices or as members of the diplomatic corps, but its appeal is not limited to that circle. It contains chapters which no serious student of international law can afford to neglect. Its distinguished author's long experience as a representative of Great Britain in many lands is a sufficient assurance of its authoritative character as a statement of diplomatic methods and procedure, and many of its chapters throw light upon questions of substantive law.

The work is divided into thirty-four chapters which are grouped in three books entitled Diplomacy in General, Diplomatic Agents, and

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International Meetings and Transactions. To the third book the entire second volume is devoted. Some of the most important chapters of the first volume deal with advice to diplomatists, the right of legation, the immunities of diplomatic agents, the diplomatic body and the termination of a mission. There are three appendices containing lists of books which are especially recommended to members of the diplomatic service.

The treatise is a collection of a multitude of precedents and examples with little discussion of principle. This is in accordance with the purpose which the author sets for himself, but nevertheless, in view of his exceptional experience and qualifications, it is to be regretted that we could not have the benefit of his criticism and judgment. The chapters which are likely to be of most general interest to students of international law are those in the first volume which deal with diplomatic agents, their training, status, duties and immunities. The advice of such veterans as Callières and the Earl of Malmsbury addressed to embryonic diplomatists, supplemented by the counsels of Sir Ernest Satow himself, should be of material value to young men who are looking forward to diplomacy as a career. In view of the many attempts made in recent years to place the American diplomatic service upon the basis of competitive examinations, it is of interest to note that in Sir Ernest's opinion the qualities upon which success in diplomacy depends cannot be tested by examinations. Those qualities are the same which bring success in all other forms of negotiation between men. The personal and intellectual traits which made Mr. Choate the leader of the American bar also made him prëëminent as ambassador to Great Britain.

It is perhaps not captious to point out that in a work devoted to diplomatic forms it is a serious blemish to refer to the kaiser as the emperor of Germany or to an official of the American state department as the under-secretary. In the discussion of the mode of obtaining the evidence of diplomatic agents it would have been well to include the case of the Venezuelan minister who, by direction of his government, waived his immunity and appeared as a witness at the trial of the assassin of President Garfield. These volumes are marred by many misprints.

LAWRENCE B. EVANS.

Boston, Mass.

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The Constitution of Canada in its History and Practical Working. By WILLIAM RENWICK RIDDELL. (New Haven: Yale University Press. 1917. Pp. 170.)

Four lectures delivered at Yale University by a distinguished Canadian jurist, Mr. Justice Riddell of the Supreme Court of Ontario, are included in this volume. They are not designed to give a formal or complete exposition of the way in which Canada is governed nor to discuss every phase of Canadian political institutions. The aim is rather to set forth the salient features of the Canadian system, to draw comparisons between the methods of government on the two sides of the border, and to indicate how constitutional arrangements which are entirely diverse in conception may give full satisfaction, each in its own sphere, when applied to people whose political traditions are alike.

After briefly sketching the outlines of Canadian political history during the last three hundred years the author proceeds to set forth, in a terse and effective way, the present-day constitutional basis of government in the Dominion. Then follows the shortest and best chapter of the four, containing a critical summary of Canadian political institutions in actual operation. It is unfortunate that Mr. Justice Riddell could not give his pen broader scope in this field, for his knowledge of the subject, his keenness of observation and his power of cogent criticism are alike beyond question. The federal government of Canada has been in action for just fifty years. An inventory of its merits and defects by one who has followed its workings so thoroughly and at such close range would be interesting to every student of public affairs.

The book concludes with a comparative view of constitutional doctrines, dealing particularly with the subject of constitutional limitations in the United States and their absence in Canada. So far as his own land is concerned the author is on sure ground; but his knowledge of constitutional law as administered by the courts in this country is by no means of the same high order. If it were we would hardly have the unqualified statement that in the United States "No interpretation by the courts of the meaning of the words of the statutes can the legislature correct; no contract created by legislation, however unwise, can be cancelled; no grant, however improvident, can be recalled," etc. (p. 145). Nor would he make the generalization (which is in fact pure sophistry) that "in the United States the courts are supreme; in Canada, the people through their representatives." To

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make himself acquainted with the fact that the decision in the Dartmouth College case is no longer the last word on the impairment of contracts in this country seems to be a duty which Judge Riddell at least owes to his own disillusionment. If the American doctrine of judicial supremacy were half so simple in its actual application as this book alleges it to be, the teacher of political science would have abundant cause for thankfulness.

WILLIAM BENNETT MUNRO.

Harvard University.

The Teaching of Government. Report to the American Political Science Association by the Committee on Instruction. Charles Grove Haines, Chairman. (New York: The Macmillan Company. 1916. Pp. xi, 284.)

The teacher of government has a sane and practical guide in this little volume, upon which the committee and the association are both to be congratulated. One cannot of course agree with everything said in the report, and the reviewer has grave doubts as to the wisdom of beginning a high school course with state government, as is done in a suggested outline (p. 102). The importance of separate departments of political science seems somewhat over-emphasized (p. 184), though separate departments are of course highly desirable in larger colleges. Something more might have been said for college courses in jurisprudence, although the lack of a satisfactory text book in this field presents a serious difficulty (p. 193).

The recommendations of the committee regarding college work in political science are valuable, and the reviewer agrees strongly with the statement that the first college course should be devoted to a concrete study of American government (p. 207). The best prepared teacher can know little of the actual workings of a number of foreign governments.

The severest criticism of the book is one which is difficult to phrase. In the hands of an immature teacher the book may lend too much encouragement to a neglect of governmental structure. This is not so much because of any statement by the committee, for the fullest statement on this subject is carefully and moderately made (p. 42). But a tendency in many places to emphasize the importance of practical work and of concrete applications may have more influence than a specific statement of the dangers of excess in these respects. Terms

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like "efficient citizenship" and "community civics" are interesting catch-phrases which are now prevalent, and which tend to cause the teaching of everything except government. Ignorant or half-informed interest in public affairs is often worse than an absence of interest, and in the reviewer's opinion a knowledge of governmental structure is the most important basis for an intelligent interest in government.

W. F. DODD.

University of Chicago.

Unfair Competition. By W. H. S. STEVENS, PH.D. (Chicago: Chicago University Press. 1917.)

Is the "Trust" or monopoly built on greater economic efficiency or on unfair methods of competition? Dr. Stevens' book reviews some of the most important available evidence on this question. His sources of information are chiefly the evidence embodied in court decisions and the testimony given before congressional investigating committees, or secured by the United States industrial commission. The author is careful to say, that while most of this evidence is given under oath, it is not to be taken as conclusive in all cases. Where possible he gives statements from other sources which enable the reader to draw his own conclusions. Twelve forms of unfair competition are discussed: Local price cutting, operation of bogus independent concerns, fighting instruments, tying clauses, exclusive arrangements, blacklists and boycotts, rebates and preferential arrangements, engrossing machinery or goods used in an industry, espionage, coercion and intimidation, interference.

A survey of these methods and of the names of the companies which have habitually and successfully used them, will convince the most skeptical that unfair competition has been an essential element in building up monopoly. The author points out that those combinations like the United States Steel Corporation, which have not made use of unfair methods, have not established a monoply, but on the contrary have grown less rapidly than their competitors and control to-day a smaller total proportion of the output than they did ten years ago. The same is true to a less degree of the International Harvester Company, which for some years has abandoned unfair methods of competing. On the contrary the Oil, Tobacco, Powder, Cash Register and other combinations relied steadfastly upon competitive "knock out drops" and have succeeded in establishing a practical control of their

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respective industries. Dr. Stevens believes that efficiency shifts from one organization to another in any given industry, that it is impossible for a combination to gather in and hold through a long series of years the best talent and perfect the best means of production and marketing. First one and later another enterprise will forge ahead regardless of its size, but no one can by sheer superiority of methods and men permanently control the field. If this be true it disposes of the theory that the monopoly survives because of greater efficiency. Rather must it survive through outside aid or illicit methods.

Dr. Stevens has done a real public service by placing in convenient form an assembly of facts on this problem. The tone of the book is not that of an arraignment or accusation. The author shows neither indignation nor heat,—he seeks in guarded language to establish the facts. He concludes with a note of praise for the quiet but practical work of the federal trade commission in definitely ascertaining and suppressing the more important of these abuses.

JAMES T. YOUNG.

University of Pennsylvania.

Oregon Minimum Wage Cases. Brief for the Oregon Industrial Welfare Commission, Defendants in Error, before the Supreme Court of the United States. By FELIX FRANKFURTER and JOSEPHINE GOLDMARK. (New York: National Consumers' League. 1917. Pp. vi, 837.)

This is the latest of that line of famous briefs associated with the names of Mr. Brandeis, Professor Frankfurter, and Miss Goldmark which have done so much to impress the judicial mind with the propriety and necessity of determining the validity of social legislation in the light of social facts.

The volume consists of 54 pages of legal argument and 763 pages of concrete evidence showing the social and economic desirability of the minimum wage.

The constitutional argument groups itself around three points. First, the purpose of the law is a legitimate one since it aims to protect the health and morals of women and minors from the dangers which more than three hundred pages of evidence demonstrate to be the results of inadequate wages. In the second place the means adopted are appropriate and plainly adapted to accomplish this end. There follows an examination of the alternative methods of dealing with the

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problem, from "that lazy gospel of fatalism" which regards the evils in question as inevitable and irremediable to the more heroic plan of state subsidies to the underpaid. Lastly the question is considered whether the minimum wage law interferes unduly with well protected constitutional rights. An elaborate discussion under nine heads leads to the conclusion that the law does not work an arbitrary or wanton deprivation of liberty or spoliation of property which would bring it under the ban of the due process clause.

In the second part of the brief the elaborate portrayal of the evils of low wages is followed by evidence to show the benefits of increased wages in general and the advantages of the legal minimum wage in particular. The volume contains a valuable analysis of existing minimum wage laws in the United States and foreign countries and a discussion of the results which have been achieved under those laws.

The preparation of this brief was begun under the direction of Mr. Brandeis before his appointment to the supreme court. His connection with the case withdrew him from a share in its decision and the tie vote of the other eight justices affirmed the decision of the supreme court of Oregon sustaining the law.

ROBERT E. CUSHMAN.

University of Illinois.

Jewish Philanthropy. By DR. BORIS D. BOGEN. (New York: The Macmillan Company. 1917.)

No one perhaps is better qualified to discuss with authority the subject of Jewish Philanthropy than Dr. Boris D. Bogen, of Cincinnati, for many years superintendent of the United Jewish Charities of Cincinnati, and more recently field Secretary of the National Conference of Jewish Charities.

"*Jewish Philanthropy*," as the author explains in his preface, is "intended to serve as a text book for beginners and as a ready resumé for those already engaged in the field," and most admirably has he kept this purpose in mind throughout.

At the very outset, Dr. Bogen properly stresses the fact that Jewish charity is *sui generis*, dealing as it does in the main with foreigners, aliens in speech and nationality and requiring special agencies to deal with this peculiarity. Himself a Russian by birth and early training, he speaks concerning the immigrant with a thoroughness born of intimate and empiric knowledge, supplemented by years of accurate and exhaustive study.

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Jewish philanthropy has become proverbial, and most interestingly has Dr. Bogen traced its development from Biblical times, when the religious law imposed its tithe, to the present day, when the ancient injunction still wields a potent influence.

The book runs the whole gamut of philanthropic endeavor. Merely to enumerate the important topics discussed and the national organizations and institutions for philanthropy, whose activities are described therein, would transcend the proper limits of a review. None the less reference at least must be made to the following subjects, particularly as they indicate the scope and breadth of the exposition which Dr. Bogen has undertaken:

National Jewish organizations; methods of fund raising; transients; immigration; distribution of immigrants; the back to the soil movement; resident-dependents; dependent women and children; standards of relief; educational and social organizations; education of immigrants; settlement and neighborhood work; organization and administration; volunteer service; charity and religion.

Even as a textbook the work of Dr. Bogen is unique in that at the conclusion of each chapter there appears a series of illuminating and comprehensive questions, intended to test the degree of thoroughness with which the student has grasped the discussion.

The author points out that Jewish philanthropy in America enjoyed its period of greatest development following the large influx of Russian and Galician Jews, as a result of religious and political persecutions. It will be interesting, therefore, to observe whether or not the advent of freedom and equality in Russia and the hoped for democratization of other European countries will have the effect of stemming the further tide of Jewish immigration, and thereby cause a lessening of philanthropic effort among the Jews of America.

Unquestionably, the most interesting chapters of this treatise are those dealing with the immigrant. With consummate artistry Dr. Bogen has pictured the soul of the immigrant, his aspirations and ideals, his obstacles and achievements, pointing out how the newcomer is being Americanized without being de-Judaized, and how philanthropic effort has been directed to prevent the breach which unfortunately occurs so frequently between the parent, with his Old World environment, and the child, so susceptible to the spirit of the New World.

The modern conception of philanthropy is emphasized—an agency not merely to feed the hungry, to clothe the naked and to shelter the homeless, but to discover and to prevent the underlying and elemental

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causes of poverty and its multitude of scourges, and to rehabilitate those who have fallen by the way in the unequal struggle of life.

ALFRED A. BENESCH.

Cleveland, Ohio.

Town Planning for Small Communities. By Walpole Town Planning Committee, Charles S. Bird, Jr., Chairman. (New York: D. Appleton and Company. 1917. Pp. xvii, 492.)

As the title suggests, a very interesting experiment is attempted in this book which appears as a volume in the National Municipal League Series. City planning for the large community has been the subject of several volumes. The towns, as more numerous than the cities and having many distinct problems of their own, were clearly entitled to separate discussion. Mr. Bird, in undertaking to provide this, has made use of little Walpole, Massachusets, as a clinical case.

The appropriateness, interest and novelty of his experiment justify the book in spite of some deficiencies in execution. These include a lack of proportion—the first part of the book devoting, as one example, nearly a hundred pages to housing against twelve to public health; the choice of illustrations—nearly always local and sometimes even personal; and the all pervading discussion of Walpole. These, it must be confessed, are faults natural to that town viewpoint which is the first requisite for a book of this kind.

The volume is divided into three parts. The first is ostensibly a general discussion of the subject. The second is frankly confined to the concrete case offered by Walpole and John Nolen's plans for it. The third is a series of appendices, of which nine out of twelve are devoted to Walpole statistics—what may be called the patient's clinical chart. Finally, there is a good index.

"In community building," says Mr. Bird in his foreword, "knowledge of conditions brings interest; interest leads to action; and organization makes that action effective." This is the admirable keynote of his book. It explains his supplementing of physical plans by valuable chapters on town government and community organization, and indicates the usefulness of the volume.

CHARLES MULFORD ROBINSON.

Rochester, N. Y.

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The Psychology of Special Abilities and Disabilities. By AUGUSTA F. BRONNER, PH.D. (Boston: Little, Brown and Company. 1917. Pp. vi, 269.)

The human mind is very prone to require downright yes or no answers to its interrogations. Is Johnny normal or is he feeble-minded; will he learn like other boys or will he be inserted in an institution? A helpful corrective to this routine-breeding simplicity in educational matters is found in Dr. Bronner's analysis of nearly fifty cases of backward and delinquent children of exceptional makeup whose difficulties and psychic characteristics have had thorough clinical study. The author is assistant director of the Juvenile Psychopathic Institute of Chicago, over which Dr. William Healy, author of "The Individual Delinquent," presided.

Among normal but backward children are many who, it appears, are unfortunate enough to be handicapped by specialized defects in one or more of the mental processes; these defects, by preventing the mastery of particular subjects, throw their whole school life into confusion, subject them to continued retardation, confirm them in the conviction of failure, tempt them to truancies and delinquencies, and in the end rob society of well-disposed and serviceable citizens. On the other hand, among the higher grades of the feeble-minded there are individuals with really good abilities in one or perhaps two directions; but these abilities remain quite unperceived in the general imbecility of their natures. By failing to exploit some saving endowment in such youth we deprive society of competent members, in the economic sense at least.

The clear inference from the expert testimony adduced in these cases is the necessity of a thorough "educational diagnosis" of all children who find unusual difficulty in doing school work. This brief but scientific account of special abilities and disabilities should be read especially by the practicing teacher and the school officer through whose hands this little army of the Not Wholly Fit is hourly passing.

ERVILLE B. WOODS.

Dartmouth College.

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MINOR NOTICES

Messrs. Duffield and Company have recently published a volume on *The Emancipation of the American City*, by Walter Tallmadge Arndt. The book deals in somewhat general fashion with the municipal reconstructions of the last twenty years, giving special attention to such matters as the home rule movement, ballot reform, the spread of direct legislation, the administration of the civil service system and various topics in municipal finance. The discussions are critical rather than expository and for the most part assume, on the part of the reader, some knowledge of the subjects treated. Neither in matter nor in method of presentation is there much that is new. In not a few paragraphs, moreover, the language, whether of criticism or of praise, is stronger than a dispassionate analysis of the facts would support. Nevertheless the book will make an effective appeal to those who like to drink their potions of reform propaganda with some ginger mixed in it.

For the general reader and the elementary student Prof. J. S. Young's *The State and Government* (Chicago: A. C. McClurg and Company, pp. 180) affords a brief excursion through the broad realm of political philosophy and governmental organization. On the whole Dr. Young has performed his task as capably as an enterprise of this nature could be performed, but the demands of brevity have been so rigorous that in many passages the virtue of clearness has had to be jettisoned. The theory of the social contract, with due mention of Hooker, Hobbes, Locke and Rousseau, for example, is reared and demolished in two pages, while the utilitarian theory of the state gets only a paragraph, and the juristic theory not even a line. Nor will the general reader derive a much more secure footing in the principles of political science from the author's discussions of government as a practical art. German colonies he tells us are "mostly in Africa." Portuguese colonies, likewise, are "mostly in Africa." Italy and Belgium have "parts of Africa." That is all we are told about the colonial systems of these four countries and it is surely not overmuch. The "general reader" could stand a more nutritious diet.

The War of Positions, by Lieutenant Colonel Paul Azan, with a preface by Brigadier General Joseph E. Kuhn of the United States Army (Cambridge: Harvard University Press pp. 186) is far more than a

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short treatise on the art of fighting in trenches. While written primarily for the instruction of American officers who are going abroad it is full of interest for the student of military history or for any intelligent reader. Great strategic principles, as the author points out, have remained unchanged through the centuries, but tactics, which comprises the art of attack and defense at close quarters, has undergone extraordinary changes within a very few years. What Colonel Azan calls a "war of positions," a war of the mutual action and reaction of weapons on the one hand and of field fortifications on the other, has never before been waged on anything like the present scale. The book, accordingly, sets forth the general principles of tactics as developed by such a war and sets them forth in a way that even a tyro in military science can understand.

A new and revised edition of Prince von Bülow's *Imperial Germany*, with a foreword by J. W. Headlam, has been issued by Messrs. Dodd, Mead and Company. A large part of the book has been rewritten since the earlier edition appeared a few years ago and much of the new matter is of great current interest. There are entirely new chapters dealing with militarism and with Social Democracy. In the concluding portion of the book there is a discussion of the probable effects of the war upon German political institutions. As a defense of Germany's foreign policy and an exposition of German aims during the decades which have elapsed since the close of the great Bismarckian epoch this volume ranks first in point of clarity and authoritativeness as well as in the dignity and restraint of its style. It sets a standard far above the usual plane of contemporary war writings.

A useful compilation of *Important Federal Laws*, by John A. Lapp (B. F. Bowen and Company: Indianapolis) contains the text of a series of congressional statutes of more general interest and application, illustrating the growth and present status of the control exercised by the United States national government. These include the principal acts of congress relating to agriculture and horticulture, banking, immigration and naturalization, regulation of business, food and drugs, labor, taxation and revenue, interstate commerce, federal elections, national defense, and the federal criminal and judicial codes. Attention is called to the fact that more than two-thirds of these measures have been enacted or extensively revised since 1910, and more than one-half have been passed, revised or amended since June, 1916.

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The National Budget System by Charles Wallace Collins (New York, The Macmillan Company, pp. 151) is a useful book on a subject of great present-day interest to students of political science. The intricacies of national finance are not easily expressed in simple terms but the author of the present volume set out to do this and on the whole he has succeeded. This is not because he has evaded or glossed over the difficulties but because he first explains with sufficient detail just how each of the great countries prepares its financial program for the year and then indicates where our own short-comings are. His criticism of the American system is incisive and to the point, but not overdone. The author's task was well worth doing and it has been skilfully accomplished.

Every five years the *Single Tax Year Book* presents an inventory of what has been accomplished by the movement for the taxation of land values. The quinquennial edition of 1917 (New York: Single Tax Review Publishing Company, pp. 460) contains a broad array of useful information for those who are interested in this subject. A feature of the publication is a series of articles dealing with the relation of the single tax to various social problems such as the regulation of child labor, the restriction of immigration and the control of large corporations. Not the least valuable pages in the volume are those (pp. 428–439) which contain a comprehensive bibliography of single tax literature, compiled by Arthur N. Young.

The initial volume of George C. Whipple's *State Sanitation* (Cambridge: Harvard University Press, pp. xi, 377) contains an exhaustive review of the work accomplished during the last forty-eight years by the Massachusetts State Board of Health. This body, as students of public health problems are well aware, has been a pioneer in all branches of preventive medicine and public sanitation. In many things it has led the way to improved methods both in this country and abroad. Its history, therefore, is the history of public progress in the art of disease prevention during the last half century. A second volume, to appear during 1918, will contain articles on various topics chosen from the board's annual reports selected "to show the evolution of thought in the realm of sanitation." Professor Whipple's keen eye for the things that are interesting has enabled him to make his book readable throughout. That it will be of great service to special students of the subject is beyond question.

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Students of municipal administration will find much to interest them in Dr. H. B. Wood's *Sanitation Practically Applied* (New York: John Wiley and Sons, pp. 473). There are admirable chapters on vital statistics, child welfare, school hygiene, milk inspection, water supply, sewage disposal and the education of the citizen in matters of sanitation. The discussion of even the most technical subjects is made simple and the practical side of every problem receives primary emphasis. In point of clearness and interest the style is much superior to that which readers encounter in most books of its kind.

To help social workers in gathering the best data and in putting it to the most effective use is one purpose of Dr. M. C. Elmer's *Technique of Social Surveys* (Lawrence, Kansas. The World Company, pp. 88). The mechanism of a social survey, the application of the survey to different features of community life and the interpretation of the data are some of the topics discussed. There is an all too brief chapter on publicity. The author has made his book thoroughly practical and it will be of distinct usefulness to those for whom it was written.

Two little volumes by Guy Morrison Walker entitled *The Measure of Civilization* (pp. 133), and *Railroad Rates and Rebates* (pp. 95) have been published by the Arthur H. Clark Company. In the latter volume the author endeavors to demonstrate that all rate reduction in the United States has been by means of rebates. The book concludes with a plea for the "repeal of all the foolish uneconomic and inequitable laws that hamper and interfere with our transportation facilities and that act as a ball and chain on the progress of civilization." Both volumes contain some good ammunition for the militant individualist.

The principles underlying industrial insurance, with a full discussion of both German and English practice, are included in *Workmen's Compensation* by J. E. Rhodes, 2nd, published by the Macmillan Company. Part of the volume sketches the history of the movement for industrial insurance in the United States with special emphasis upon the constitutional difficulties which were encountered. There is a good analysis of the laws now on the statute books of various states. Well selected lists of references are appended to each chapter. No better or more readable summary of the whole subject can be found anywhere than that which this volume places at the disposal of its readers.

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The *Canadian Annual Review of Public Affairs for 1916*, edited by J. Castell Hopkins (Toronto: The Annual Review Publishing Company) is in large part devoted to a narration of events connected with the Dominion's participation in the war. There is, however, the usual discussion of political, social and economic happenings not connected with the great struggle. This work, of which the present annual volume is the sixteenth, ranks as one of the most useful reference works of its kind in any country. It deserves a place in every large American library.

Francis J. Audet's *Canadian Historical Dates and Events* (Ottawa: George Beauregard, pp. 239) is an extremely serviceable reference book because of its wide scope, completeness and accuracy. It contains many things, such as lists of Canadians who have received titles from the crown, the exact dates of treaties, the dates of charters granted to railways, etc. which are not elsewhere easy to find.

A fourth edition of Hinsdale's *American Government* has been issued by the American Book Company. Since its original publication more than twenty-five years ago this book has had and fully deserved a wide use as a school text book in all parts of the country. For this edition the book has been considerably revised by Miss Hinsdale and the type entirely reset.

Ultimate Democracy and its Making, by Newell L. Sims (A. C. McClurg and Company, pp. 347) is a history of democracy, a summary of democracy's exemplifications and a study of its relations to the social order, to economic activity and to international policy. To the perennial discussion of democracy, what it is and what it means, the book is a useful and in some ways a noteworthy contribution.

The fourth volume of Prof. Edward Channing's *History of the United States* (New York: The Macmillan Company, pp. 575) covers the period from 1789 to 1815 and includes several chapters of great interest to students of political science. Special mention should be made of those chapters which deal with the organization of the new federal government, the rise of political parties, and the downfall of Federalism.

Messrs. G. P. Putnam's Sons have issued a second and revised edition of James A. Woodburn's *American Republic and its Government*.

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Various changes have been made, bringing this useful volume down to date.

The Mexican Problem, by C. W. Barron, published by Messrs. Houghton, Mifflin Company, endeavors to present a "business solution" of the existing chaos south of the Rio Grande. The book is based on the author's own investigations and is written in a picturesque style.

In response to various enquiries concerning the methods of classifying municipal documents and reports a pamphlet explaining *The Classification Scheme of the Library for Municipal Research at Harvard University*, by Joseph Wright, has been printed by the Harvard University Press.

The Commission to compile data for the Massachusetts constitutional convention has thus far printed thirty bulletins ranging in length from ten to one hundred pages as noted in the list of publications. Five further bulletins on the subjects of billboard regulation, woman suffrage, advisory judicial opinions, the regulation of the liquor traffic, and methods of amending state constitutions will appear shortly. Application for any of these bulletins should be made to the Secretary of the commission, Room 426, State House, Boston.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

Academy of Political Science, Proceedings of the. The foreign relations of the United States. Pp. 331. July, 1917.

American Academy of Political and Social Science, Annals of the. America's relation to the world conflict. Pp. 250. Phil. July, 1917.

Bacon, Charles W., and *Morse, Franklyn S.* The American plan of government. G. P. Putnam's Sons.

Bird, E. H. Political facts, including full text of Republican and Democratic platforms. Pp. 30. N. Y., C. S. Hammond & Co.

Buck, S. J. Illinois in 1818. Pp. 362. Springfield: The Illinois Centennial Commission.

Channing, Edward. A history of the United States. Vol. IV. The Federalists and Republicans. Pp. 575. Macmillan.

Chaplin, H. W. Principles of the federal law as presented in decisions of the Supreme Court. Pp. 88 + 903. Wash., D. C., J. Byrne & Co.

Collins, Charles Wallace. The national budget system and American finance. Pp. 151. The Macmillan Co.

Crennan, C. Holloway. A survey of state executive organization and a plan of reorganization. Pp. 87. Menasha, Wis., Banta Pub.

Davis, Joseph Stancliffe. Essays in the earlier history of American corporations. 2 vols. Pp. 546, 419. Cambridge: Harvard Univ. Press.

Evans, E. C. A History of the Australian Ballot System in the United States: A Dissertation. Pp. 5 + 102. University of Chicago Press.

Farish, Thomas Edwin. History of Arizona. Volumes III and IV. Pp. ix, 371; viii, 351. Phoenix, Ariz., the author.

Fernan, Hermann. The coming democracy. Pp. 8 + 321. New York: E. P. Dutton & Co.

Freund, Ernst. Standards of American legislation. Pp. 20 + 327. Univ. of Chicago.

Harris, H. Wilson. President Wilson, from an English point of view. Pp. 278. F. A. Stokes Co.

Haynes, J, Randolph. Direct government in California; an address. Pp. 17. Wash., Gov. Pr. Off.

Hennessy, Michael E. Twenty-five years of Massachusetts politics, from Russell to McCall, 1890–1915. Pp. 398. Boston, Practical Politics.

Hoar, R. S. Constitutional Conventions. Pp. 16 + 240. Little, Brown & Co.

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Insull, S. Some comments on public-utility commissions and their relations with public-utility companies. Pp. 19. Chicago.

Johnson, R. The fight for the republic. Putnam.

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